

Alfaro - People - cross

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1 Q. 2250, that would be 10:50 p.m.?

2 A. Yes.

3 Q. And that means that you billed the City of New
4 York Police Department for two days of overtime, correct?

5 MS. JOHNSON: Objection, she doesn't bill
6 anybody -- sorry, sorry.

7 MR SCHECHTER: I'll rephrase the question.

8 THE COURT: Yeah, please.

9 Q. You applied for how much overtime on this arrest?

10 MS. JOHNSON: Objection.

11 THE COURT: I'll allow it.

12 If you know.

13 (Pause in the proceedings.)

14 Q. How much overtime do you apply for in this arrest?

15 A. I'm trying to figure it out. Hold on.

16 Q. I'm sorry, go ahead.

17 A. Possibly 15 hours.

18 Q. Fifteen hours.

19 Now, overtime means you're paid two times your
20 normal rate of pay, is that correct?

21 A. Time and a half.

22 Q. Time and a half.

23 And notwithstanding Detective Shulman had already
24 had Mr. Gopaul in custody, you became the arresting officer
25 and you worked on -- with him for the better part of how

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1 many hours?

2 A. Don't recall.

3 Q. Well, you just told us from 4:45 through -- in the
4 morning until 11:50 at night, correct?

5 A. Yes.

6 Q. And that was well beyond your scheduled ending
7 tour time, correct?

8 A. Yes.

9 Q. While you were doing this what was
10 Detective Shulman doing?

11 MS. JOHNSON: Objection.

12 Q. If you know?

13 THE COURT: No, I'll allow it.

14 A. Don't recall.

15 Q. Well, Detective Shulman had interrogated my
16 client, hadn't he?

17 MS. JOHNSON: Objection.

18 Q. If you know?

19 THE COURT: Overruled.

20 You could answer that.

21 A. Don't recall.

22 Q. Didn't you have a conversation with
23 Detective Shulman when you got to the precinct?

24 A. Yes.

25 Q. Didn't you ask him what he did?

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1 A. Yeah, he interviewed the complainant.

2 Q. Did he also interview Mr. Gopaul?

3 A. Yes.

4 Q. So he had a conversation with both?

5 A. Yes.

6 Q. Now, as part of your duties you fill out a
7 complaint report, is that correct?

8 A. No -- as part of my duty, yes.

9 Q. And in this case you had filled out a Omniform
10 System complaint, is that correct?

11 A. No.

12 Q. You had not?

13 A. No.

14 Q. Did you prepare it?

15 A. No.

16 Q. Who prepared it?

17 A. I have to look at my notes.

18 Q. Please.

19 A. It would be Officer Morris.

20 Q. Officer Morris prepared the Omniform System
21 complaint form?

22 A. Yes.

23 Q. Was it based on information you provided him?

24 MS. JOHNSON: Objection.

25 THE COURT: I'll allow that.

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1 Can you answer that?

2 A. Can you rephrase the question?

3 Q. Was the information that he put on the form based
4 upon information you provided him?

5 MS. JOHNSON: Objection.

6 THE COURT: Yeah, same ruling, overruled.

7 A. Yes, and interviewing the complainant.

8 Q. Correct?

9 MR. SCHECHTER: I would like this marked as
10 Defendant's S, please, for identification.

11 THE COURT: Defendant's S.

12 (Defendant's Exhibit S marked for
13 identification.)

14 Q. Now, before we get to this form, why didn't you
15 prepare this document?

16 A. Because I wasn't on tour at that time.

17 Q. It was prepared after you were off tour?

18 A. Prior to my tour.

19 Q. So what were you doing for 16 hours?

20 A. What time?

21 What date?

22 Q. From 0445 through 2250 of the next day -- night?

23 A. I was preparing the arrest booking sheet, the
24 vouchering and waiting on the ADA, riding ADA.

25 Q. The ADA arrived not much longer after the time you

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1 got to the precinct, right?

2 A. I don't recall.

3 Q. Well, while you were waiting for the DA wasn't
4 Detective Shulman waiting for the DA, too?

5 A. Yes.

6 Q. Why did the two of you have to wait for the DA?

7 A. Because I was the arresting officer.

8 Q. Are you saying you did not prepare this document,
9 you gave this to another officer to prepare, but you told
10 him what to put in, is that correct?

11 A. I didn't prepare the document.

12 Q. But you provided the information that went into
13 the preparation of that document, correct?

14 A. I reviewed the complaint report and also
15 re-interviewed the complainant prior to me starting my
16 on-line booking sheet.

17 Q. You reviewed the document and re-interviewed the
18 complainant.

19 Now, did you tell Officer Morris that Mr. Gopaul
20 should be charged with a misdemeanor, sexual abuse?

21 MS. JOHNSON: Objection. Move to strike all
22 that, Judge.

23 THE COURT: Yeah, sustained.

24 MR SCHECHTER: Please show that to the
25 witness.

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1 (Shown to witness.)

2 Q. Now, look on the top there.

3 Did you tell Officer Morris to charge

4 Mr. Gopaul --

5 MS. JOHNSON: Objection.

6 Q. -- with misdemeanor sexual abuse?

7 MS. JOHNSON: Objection.

8 THE COURT: Yeah, objection sustained.

9 MS. JOHNSON: Move to strike that, your
10 Honor.

11 THE COURT: There's no answer, so there's
12 nothing to be stricken.

13 MR. SCHECHTER: May I have that back, please?

14 (Shown to counsel.)

15 Q. So what you're saying to this jury is you spent
16 from 4:45 in the morning until the next night, over 16
17 hours, waiting for the DA and preparing some forms, but not
18 this form, is that correct?

19 A. Yes.

20 Q. This form was prepared by another officer?

21 A. Yes.

22 Q. And on what basis did the other officer prepare
23 this form?

24 MS. JOHNSON: Objection.

25 THE COURT: Yeah, sustained.

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1 Q. Now, there came a time when the District Attorney
2 sent two representatives to the precinct, is that correct?

3 A. Yes.

4 Q. And you observed that, did you not?

5 A. Yes.

6 Q. And you observed that from outside the room, is
7 that correct?

8 A. Yes.

9 Q. Detective Shulman was inside the room?

10 A. Yes.

11 Q. What were you doing outside the room?

12 A. Awaiting until they were finished.

13 Q. So the City of New York was paying the detective
14 to sit there and you to sit there to wait for the same
15 prisoner?

16 MS. JOHNSON: Objection.

17 THE COURT: Yeah, sustained.

18 Q. Police officers threw Mr. Gopaul around, didn't
19 they, when he first came into the precinct?

20 MS. JOHNSON: Objection.

21 THE COURT: No, I'll allow that, if she
22 knows.

23 A. I was out in the field.

24 Q. Did you examine Mr. Gopaul's arms and legs?

25 A. No.

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1 Q. Well, do you know what time Mr. Gopaul surrendered
2 to the precinct?

3 A. No.

4 MR SCHECHTER: Can I have a moment, Judge?

5 THE COURT: Yes.

6 (Pause in the proceedings.)

7 Q. When you went to the vehicle with Sana Awan, was
8 anyone else with you?

9 A. I don't recall.

10 Q. Now, how many of these arrests do you participate
11 in?

12 MS. JOHNSON: Objection.

13 THE COURT: Yeah, sustained.

14 Q. How many sexual abuse arrests have you done within
15 the past year?

16 MS. JOHNSON: Objection.

17 THE COURT: I'll allow it.

18 A. I don't recall.

19 Q. More than one?

20 A. I don't recall.

21 Q. How many arrests do you participate in where the
22 complainant comes to the car and points a knife out to you?

23 How many of those do you participate in, officer?

24 MS. JOHNSON: Objection.

25 THE COURT: Yeah, sustained.

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1 Q. Officer, you don't know because you're trying to
2 protect Detective Shulman, isn't that correct?

3 MS. JOHNSON: Objection.

4 THE COURT: No, I'll allow that.

5 A. Can you rephrase the question?

6 Q. Your absence of knowledge is because you want to
7 protect Detective Shulman?

8 A. No.

9 Q. Wouldn't you know who was with you when you made
10 an identification of an object?

11 Isn't that part of your job?

12 MS. JOHNSON: Objection.

13 THE COURT: Yeah, sustained.

14 Q. You've been a police officer eight years?

15 A. Yes.

16 Q. In the eight years you've had academy training,
17 you've had training on the job and you've made arrests, have
18 you not?

19 A. Yes.

20 Q. You filled out these on-line booking forms, you're
21 used to testifying in court, are you not?

22 A. Yes.

23 Q. All right, now, when you testify in court as a
24 trained police officer you're trained to have an
25 observation, right?

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1 You're trained to be observant?

2 A. Yes.

3 Q. Now, I'm asking you relying on the use of your
4 training.

5 Was Detective Shulman with you when you went to
6 the car?

7 A. I don't recall.

8 Q. Did you have the keys to the car with you when you
9 went to the car?

10 A. I don't recall.

11 Q. You have a difficult memory situation there,
12 officer --

13 THE COURT: Mr. Schechter, please, if you
14 could refrain and restrain yourself a little bit.

15 MR SCHECHTER: I have no more questions of
16 this officer, your Honor.

17 THE COURT: Okay.

18 Ms. Johnson, any redirect?

19 MS. JOHNSON: No thank you, Judge.

20 THE COURT: All right, Officer Alfaro, watch
21 your step as you step off.

22 Can I just see both attorneys real quick?

23 (Witness excused.)

24 MS. JOHNSON: Yes, your Honor.

25 (Discussion held at the bench, off the

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1 record.)

2 THE COURT: All right, some good news. Good
3 news is you're going home early today. We've kind of
4 run out of witnesses.

5 I've been discussing with the attorneys
6 scheduling.

7 Now, it -- as I'm sure all of you figured out
8 by now, we have moved -- been moving along,
9 notwithstanding some of our delays, pretty quickly and
10 it's anticipated that at this point the People are
11 going to be calling one more witness at which time
12 they're going to rest. That's going to take place
13 tomorrow.

14 The defendant, should he choose to put on a
15 case, will more than likely start tomorrow. Tomorrow,
16 I think, is Wednesday. So it appears - and I have my
17 fingers crossed, I know you can't see me, but I
18 actually have my fingers crossed under my robes s right
19 now - it appears as though I might be able to get this
20 case to you by the end of the week.

21 Now, it could be Thursday, could be Friday,
22 we have to see what happens. So obviously when I say
23 we'll get the case to you, summations, my charge and
24 obviously you'll begin your deliberations. So we are
25 significantly ahead of schedule, so that's also a bit

1 of good news.

2 But I just want to caution that, you know,
3 jury deliberations have their own life, if you will,
4 and I certainly don't want anyone to feel by any means
5 that there's any kind of pressure or any kind of rush
6 for -- to conclude your deliberations, so it's very
7 important, it's -- I want you to take this, obviously,
8 extremely seriously, as I'm sure you will.

9 So -- but at least at this point I feel
10 relatively confident that by the end of this week I'll
11 be giving this case for you to decide. So just -- I
12 think it's doubtful at this point, unless deliberations
13 extend, and it's been known to happen, jury
14 deliberations sometimes can go over the course of a
15 couple of days, but I'm clearly, at this point, I think
16 that you should have the case by the end of this week
17 and, again, hopefully we'll -- I'll be able to live up
18 to my word, if you will.

19 So, at this point I'm going to let you go for
20 the evening.

21 Again, as I let you go, just remember my
22 admonitions.

23 Please don't talk amongst yourselves or with
24 anyone else about the case.

25 Please don't form any opinions.

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1 Please don't do any research on line or
2 through any other means or mechanism.

3 Please don't view or visit any of the areas
4 described.

5 Get home safe. We'll see you back here
6 tomorrow at 9:30.

7 (Jury exits.)

8 MR. SCHECHTER: Judge, the Police Department
9 refused to accept the subpoena. They wanted 24-hour
10 notice. They didn't like the fact I changed the date
11 to today, so they're giving me a hard time about
12 honoring my subpoena for Detective Moran for tomorrow.

13 THE COURT: Can I see you for a minute?

14 MS. JOHNSON: Sure.

15 (Discussion held at the bench, off the
16 record.)

17 MR. SCHECHTER: I would like the record to
18 reflect that it was based upon the Court's ruling to me
19 regarding the videotape that I intended to put into
20 evidence that the Court would, in the event I put it
21 into evidence, the Court would then permit the District
22 Attorney to go into those other charged acts that the
23 Court had limited her from putting into evidence. It's
24 for that reason that I did not put these videos into
25 evidence because I felt constrained that if I did so

1 then all of the other charged crimes would be in,
2 Judge. I have to make the record clear.

3 THE COURT: But you seem to have a way of --
4 and I want to be careful with what I'm going to say,
5 but, you seem to have a kind of creative view of what
6 has transpired with respect to some of my rulings.

7 And I want to respond to it because I, quite
8 frankly, am starting to think that you're
9 misrepresenting things.

10 Number one, whether or not the People would
11 be allowed to engage or get into on redirect
12 examination things with respect to matters that I had
13 precluded based upon my Sandoval ruling, I didn't say
14 that that was definitely going to happen.

15 And, quite frankly, I'm sure you can
16 appreciate it's very difficult for me to make such a
17 ruling when I haven't even seen what was in the video
18 that you wanted to show.

19 So that has to be made clear that whatever
20 your reasons are, your reasons are, but certainly I
21 don't want to be misrepresented. I'll speak for
22 myself.

23 I just said to you that to the extent should
24 I allow any of that material to be played by you, that
25 it could possibly open the door to the DA, and I think

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1 I said this, to the DA eliciting material that I had
2 heretofore precluded in my Sandoval ruling.

3 So I don't want it to be represented that I
4 had already made that determination. I couldn't have
5 made that determination because I don't know what was
6 on the DVDs or the videos.

7 MR SCHECHTER: I volunteered to show it. I
8 showed it to counsel. I'll show it to the Court
9 because I haven't rested yet. I still could either
10 recall Sana Awan or perhaps get them in through another
11 way, but the fact is I would be delighted to show them
12 to the Court. I thought I did so orally.

13 But your Honor is correct. There's no way
14 that the Court could possibly get, from a verbal
15 description of what's in the video, unless the Court
16 sees what's in the video and I was trying to make that
17 known to the Court.

18 The videos are little vignettes, they take
19 maybe ten to 20 seconds, and there are maybe six of
20 them, that's all, and they're very short and I only
21 wanted to -- I still will show the Court, we have them
22 here. I would like to show the Court so that the
23 record is clear what it is so that we understand the
24 basis for the ruling and so that the record has no
25 ambiguity and all and I do apologize if the Court

1 thinks I misrepresented its position. It was not my
2 intention.

3 I was under the impression based upon what
4 your Honor had said that were I to put these in
5 evidence I might be opening the door to the inclusion
6 of the other charged acts and I certainly didn't want
7 to do that.

8 However, that said, I would like to play them
9 for the Court so that the Court could see what they
10 contain.

11 THE COURT: Well, again, going back to what
12 we discussed before while Ms. Awan was still on the
13 witness stand, it's my impression, and correct me if I'm
14 acting under a misimpression, that these vignettes, as
15 you've characterized them, cover periods in 2006, 2007
16 and you indicated that it was the last quarter of 2007
17 into the first --

18 MR SCHECHTER: No, your Honor, I said, I
19 believe, November or the end of 2007 to the first
20 quarter of 2008. I believe the last one was somewhere
21 around March, if I can recall, and the reason why I
22 wanted them put into evidence is because the People
23 have, in their opening statements and additionally
24 through the testimony of Sana Awan, have represented
25 that the fear that she had was continual from May

1 through -- rather, from 2005 through June of 2008 and
2 it was on that basis I wanted to show someone under
3 this kind of fear and terror, these videos certainly
4 belie that fear, that continual fear that counsel
5 wanted to demonstrate to the jury, and that's the
6 purpose that I wanted to show them.

7 THE COURT: Well, at the risk of beating a
8 dead horse, as the expression goes, as I indicated, if
9 these videos were depicting the complainant at a time
10 that was subsequent, if you will, and I even said
11 before, either the acts in Queens that I allowed the
12 People to elicit and what's contained in the
13 indictment, which I certainly would think you would be
14 entitled to because she did make reference to being
15 threatened during the period of time in May and June of
16 2008, I would certainly allow you to do that and it
17 sounds from what you're telling me is that these
18 vignettes, the latest they go to in 2008 -- that they
19 don't cover anything in 2005, 2006, 2007.

20 MR SCHECHTER: Well, they do, the last part.

21 THE COURT: The last part of 2007 and you
22 indicate that they go back as far as almost recent to
23 the indictment as March of 2008.

24 MR SCHECHTER: I believe, if I can recall,
25 that was approximately when the last one was.

1 THE COURT: Well, I am -- what I will do --
2 as far as I'm concerned, my ruling stands,
3 Mr. Schechter.

4 Now that I've got the minutes, I did look at
5 them before I ruled on -- made my ruling earlier.
6 Other than the incidents in May and June of 2008, I
7 don't really think that there has been testimony where
8 Sana Awan talks about being in fear for her physical
9 safety and, in essence, the DVDs or the items that you
10 want to play for the jury seem to cover a period of
11 time that really there's been no testimony about at
12 this point.

13 I mean, there's been no testimony in the end
14 of 2007 and in 2008 it picks up in May, so you're
15 basically asking me to have the jury see snippets of
16 encounters that she had with your client and her family
17 that at a period of time that really is either not
18 relevant in the Molineaux application and certainly not
19 relevant in terms of the indictment.

20 MR. SCHECHTER: Well, your Honor, our
21 positions are clear and your ruling is clear and I can
22 just only except. That's why I wanted to play them for
23 the Court so the Court could see the way the
24 complaining witness was reacting to her stepfather at
25 times when she alleges she was, in fact, abused and --

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1 THE COURT: Well, would you agree with me the
2 only time she alleged -- the only time -- that
3 testimony was elicited about the abuse was in I think
4 '05.

5 MR SCHECHTER: I believe, if I recall, your
6 Honor, there was another question counsel asked
7 concerning kitchen knife and I don't believe that was
8 in 2005. I believe that was in 2008 that she was
9 threatened with a kitchen knife. Counsel did extract
10 that information from her.

11 THE COURT: When in 2008?

12 MR SCHECHTER: I don't recall, your Honor. I
13 don't recall. I would have to look at the minutes.

14 THE COURT: All right, and it sounded as
15 though -- at some point in afternoon it sounded as
16 though you were going to be ordering the minutes.

17 MR SCHECHTER: Yes, I am.

18 THE COURT: All right, so when you get those
19 minutes, if there's something you want to point out to
20 me I will certainly reconsider and let you renew your
21 application. I'll certainly take a look at what I have
22 at this point.

23 MR SCHECHTER: Okay, your Honor, thank you.
24 Anything else we need to take up?

25 MS. JOHNSON: No.

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1 THE COURT: You'll make sure Detective
2 Shulman is here tomorrow?

3 MS. JOHNSON: Yes, Judge.

4 MR SCHECHTER: Thank you, Judge.

5 (Proceedings adjourned to Wednesday,
6 May 13th, 2009 at 9:30 a.m.)
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU : CRIMINAL TERM PART 80

-----X

THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 2415N/09

-against-

HAROLD GOPAUL, : Sex Abuse 1

Defendant. : Trial

-----X

May 13, 2009

252 Old Country Road
Mineola, New York

B E F O R E:

HONORABLE JAMES P. McCORMACK,
Acting Supreme Court Justice

A P P E A R A N C E S:

(As previously noted.)

* * * * *

THE COURT: The record should reflect that
myself and counsel have had a conference back in my
chambers.

What I brought to both counsel's attention is
information that was imparted to me at one point that
yesterday afternoon that one of our sworn jurors, it's
believed to be Juror Number 8, had made a comment to
the officer as the jurors were assembling to come

1 upstairs, to him only, and according to my officer not
2 in the presence of any other jurors, a comment along
3 the lines that, "Why don't we just take this person and
4 shoot him, or, "Take this guy and shoot him."

5 I'm assuming that this juror was making
6 reference to the defendant.

7 My court officer said, "Please don't say
8 anything further, don't discuss it with me," and then
9 at some point yesterday brought it to my attention.

10 I've advised both counsel that what I intend
11 to do is ask this juror to come back here. I want to
12 ask him as to whether or not he's formed a final
13 opinion about the case at this point without having the
14 benefit of either hearing the defense case, summations
15 or my instructions on the law and I want to also ask
16 him if he's formed a bias, if you will, a prejudice at
17 this point, that he feels he can no longer sit in this
18 particular case.

19 I'll ask him as to whether or not he's
20 discussed the evidence that's been testified to and
21 that's been introduced at this point with his fellow
22 jurors and, depending upon his answers, I'll make
23 further inquiry, if necessary.

24 MR. SCHECHTER: Your Honor, respectfully
25 request, since this man has apparently vocalized very

1 extreme views concerning my -- apparently my client,
2 because he's the only one here being judged at this
3 point, that Mr. Casesa's opinion might have affected
4 the entire jury, thus, notwithstanding any of his
5 answers, that the jurors be polled to see if he
6 discussed any of his opinions with them because I don't
7 expect Mr. Casesa to come in here and admit he engaged
8 in that kind of conduct.

9 THE COURT: Well, you're assuming that he's
10 discussed the evidence with his -- with the other
11 jurors.

12 As I indicated a moment ago, I'm certainly
13 intending to ask him that question and, depending upon
14 his response, I'll take what other steps are necessary.

15 But I'm not going to, at your request, at
16 this point start poling the jurors as to whether or not
17 he has discussed the evidence with them at this point
18 without having the benefit of hearing from him.

19 Artie, if you would ask Chris, if he's with
20 the jury, ask him to come up with all of his
21 belongings.

22 MR. SCHECHTER: I would like the record to
23 reflect, your Honor, that my client has, in fact,
24 executed an Antommarchi waiver and this conference is
25 being held in your Honor's chambers.

1 My client has been informed by me the purpose
2 of this conference, so it's not as if my client has not
3 been informed as to what's going on.

4 THE COURT: Okay.

5 (Juror enters.)

6 THE COURT: Hi, Mr. Casesa, come on in.

7 It is Mr. Casesa, right?

8 THE JUROR: Yes.

9 THE COURT: Come on in, relax.

10 Mr. Casesa, I brought you up here because it
11 came to my attention yesterday that you had made a
12 comment to one of my officers about --

13 THE JUROR: Oh, I'm sorry.

14 THE COURT: Let me just finish, that, you
15 know, made a comment that -- and I'm not trying to put
16 words in your mouth, but something about, "Why don't we
17 just take this person out and shoot him," or words to
18 that effect.

19 THE JUROR: It was stupid on my side. Sorry.

20 THE COURT: And I take it by that that you
21 did say that, that that was something --

22 MS. JOHNSON: I did, out of outrage or
23 something --

24 THE COURT: Look, it's not uncommon for
25 people to, you know, form certain tentative opinions.

1 Obviously, we're concerned that you've formed
2 a final opinion about the case without having heard the
3 defendant's case, if they decide to put one on, without
4 hearing the summations and the instructions on the law
5 and I'm obviously very concerned about that.

6 Have you come to a final conclusion at this
7 point?

8 THE JUROR: No, no.

9 THE COURT: All right. Now, my other concern
10 is have you discussed the evidence at this point in the
11 case with other jurors?

12 THE JUROR: No.

13 THE COURT: Or have you made similar comments
14 to other jurors?

15 THE JUROR: No, no.

16 THE COURT: That's another concern of mine.
17 Okay, all right, and you're telling me the
18 truth?

19 THE JUROR: Yeah, sure.

20 THE COURT: All right, and you feel at this
21 point that you could be fair and impartial to both
22 sides?

23 THE JUROR: I would like to hear the rest of
24 it, the defense, to make up my mind, but that was
25 just -- I don't know why that came out. I don't even

1 know why.

2 THE COURT: All right, look, again, we're all
3 human, as I said to you during jury selection, and if I
4 recall correctly during jury selection I know that
5 you -- and I don't know if it was you, but you'll tell
6 me if it wasn't, that you had said -- you may have been
7 asked by one of the attorneys as to whether or not you
8 could be fair and impartial if you heard certain
9 emotional testimony.

10 THE JUROR: I did. That was me, yes.

11 THE COURT: And you seemed to be concerned
12 about that.

13 THE JUROR: Little bit. But now it's, you
14 know, I hear more things and, you know, it's like --

15 THE COURT: Okay. Why don't you do me a
16 favor, Mr. Casesa, just have a seat in the courtroom.
17 I need to discuss some things with the attorneys and
18 then I'll have you back, okay?

19 THE JUROR: Sure. Thank you.

20 THE COURT: Just follow my officer outside.
21 (Juror exits.)

22 THE COURT: Mr. Schechter, what's your
23 pleasure?

24 MR. SCHECHTER: First of all, I would like
25 him excused and replaced by an alternate.

1 But, secondly, I would respectfully ask the
2 Court make inquiry of the entire jury to see if, in
3 fact, they were infected with this man's comments,
4 notwithstanding his representations that he did not
5 discuss either his opinions or the evidence with the
6 other jurors. I am concerned that he might have
7 infected the other jurors and perhaps tainted them in
8 some way because of his apparently extreme opinions.

9 THE COURT: Well, I think the record should
10 reflect that rather than denying making the statement,
11 Mr. Casesa was actually fairly candid and readily
12 acknowledged the fact that he did say that.

13 I then asked him whether or not he expressed
14 any opinion about the evidence with fellow jurors. He
15 said no.

16 I then asked him if he expressed any similar
17 comments to the jurors and, again, he said no and I
18 asked him a third time if he was telling me the truth
19 and he said he was.

20 The officer that he made the comment to is
21 here, Mr. Kenneth Gordon, and, Ken, I believe that when
22 he made that comment to you there was no other jurors.

23 COURT OFFICER: There was nobody around. He
24 was separate and apart from everybody.

25 THE COURT: So, People?

1 MS. JOHNSON: We consent to having him
2 excused and replaced with the alternate.

3 THE COURT: Do we know who our first
4 alternate is?

5 THE CLERK: It would be Dennis Hearn.

6 THE COURT: Just so the record is clear, I'm
7 going to grant your application, Mr. Schechter. I'll
8 excuse Mr. Casesa with our thanks.

9 I'm not going to grant the second part of
10 your application to conduct an inquiry of the remainder
11 of the jury. I think the record is pretty clear that
12 he has not made such comments to them.

13 MR. SCHECHTER: Please note my exception.

14 THE COURT: And at this point I don't see the
15 necessity to do this at this point.

16 People, you are consenting to the defendant's
17 application with respect to excusing Mr. Casesa?

18 MS. JOHNSON: We consent to that, yes.

19 THE COURT: All right, so -- off the record.

20 MR. SCHECHTER: Would the Court please direct
21 Mr. Casesa to have no other contact with the other
22 jurors?

23 THE COURT: He's got all of his stuff.
24 That's why I asked him to come up here with everything.

25 Kenny, if you would just ask him not to go

1 downstairs and that -- what would he do, just report to
2 central jury?

3 THE CLERK: He doesn't have to. He could
4 just go home, if he wants.

5 COURT OFFICER: I'll walk him down out the
6 door, Judge.

7 THE COURT: All right, let's bring him back.
8 (Juror enters.)

9 THE COURT: Mr. Casesa, out of an abundance
10 of caution, and I want to first of all thank you for
11 your candor, I think it's probably best, at this point,
12 that I excuse you from the case and, again, with my
13 thanks and I just think at this point it's probably
14 best.

15 I know you said that you felt that you could
16 still remain to be fair and impartial, but obviously,
17 you know, the comment or -- the comment is one that
18 obviously concerns the parties in the case and that's
19 why we pick alternates.

20 So I don't want you to think that because of
21 it the trial is not going to go on, it is, and -- but I
22 want to thank you and what I'm going to ask you to
23 do -- you're excused at this point. You can leave. My
24 officer will, you know, tell you where to go.

25 I think you brought up all your belongings

1 from downstairs?

2 THE JUROR: Yeah.

3 THE COURT: And, again, you'll get the
4 benefit of enjoying this beautiful day more than us.

5 So thank you very much and I appreciate your
6 service.

7 THE JUROR: Okay, thank you. Bye-bye. Have
8 a good day.

9 (Juror excused.)

10 THE COURT: All right, we'll replace
11 Mr. Casesa with Mr. Hearn and if either of you want I
12 would just direct the jury that they may notice that
13 there's one of our alternates has replaced the seated
14 juror, they're not to speculate upon why or draw any
15 conclusions or inferences, if you want. If you don't
16 want me to, I won't.

17 MR. SCHECHTER: I think that that instruction
18 would be good.

19 MS. JOHNSON: I have no problem with that.

20 (Conference in chambers concludes.)

21 (Pause the proceedings.)

22 (Jury enters.)

23 THE CLERK: Case on trial, People of the
24 State of New York against Harold Gopaul,
25 Indictment 2415N of 2008.

1 Are both counsel ready to proceed?

2 MS. JOHNSON: Ready.

3 THE COURT: All right, good morning, members
4 of the jury.

5 You'll obviously notice that, Mr. Hearn, you
6 have now, as our first alternate, have now been seated
7 as Juror Number 8.

8 I don't want anybody to speculate, obviously,
9 why prior Juror Number 8 has been excused. I don't
10 want anybody to speculate. It's of no moment or no
11 concern to you and you should not draw any inference
12 over the fact that one of our sworn jurors has been
13 replaced by an alternate.

14 So at this point we're ready to proceed.

15 Ms. Johnson, if you would?

16 MS. JOHNSON: Your Honor, People call
17 Detective Lennard Shulman.

18 THE COURT: Detective Shulman.

19 L E O N A R D S H U L M A N, a witness called on behalf of
20 the People, having been first duly sworn by the
21 clerk of the Court, was examined and testified under
22 oath as follows:

23 COURT OFFICER: Okay, have a seat please.

24 For the record, state your name, spell your
25 last name, your shield number, your rank and command.

Shulman - People - direct

621

1 THE WITNESS: Detective Lennard Shulman,
2 L-e-n-n-a-r-d, S-h-u-l-m-a-n, Shield 6387, assigned to
3 the 105 Precinct detective squad of the New York City
4 Police Department.

5 THE COURT: Ms. Johnson?

6 MS. JOHNSON: Thank you.

7 DIRECT EXAMINATION

8 BY MS. JOHNSON

9 Q. Good morning, Detective Shulman.

10 A. Good morning.

11 Q. How long have you been employed by the New York
12 City Police Department?

13 A. Approximately the last 15-1/2.

14 Q. Throughout the last 15-1/2 years could you tell us
15 the nature of the assignments you've worked and appointments
16 you worked in?

17 A. October of 1993 I was assigned as a probationary
18 police officer to the Police Academy.

19 On March of '94 I graduated the Police Academy and
20 was assigned to the 104 Patrol Precinct as a uniformed
21 officer.

22 In November of 1997 I was assigned to a city-wide
23 anti-crime unit as a police officer.

24 In June of 1999 I was promoted to detective
25 specialist within the same unit.

Shulman - People - direct

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1 In April of 2002 I was promoted to detective
2 investigator and assigned to the 105 Precinct detective
3 squad as a case investigator and February of '08 my
4 assignment was changed to homicide and shooting investigator
5 and in March of '08 I was promoted to second grade
6 detective.

7 Q. What is your current title?

8 A. Detective second grade assigned as a homicide
9 investigator in the 105 Precinct detective squad.

10 Q. And what are your general duties in that capacity
11 while assigned to the 105?

12 A. Primarily to investigate homicide and shooting
13 cases and to also investigate any other cases that are
14 referred to my office.

15 Q. Where is the 105 located?

16 A. In Queens County in Queens Village.

17 Q. I'm going to direct your attention to June 23rd,
18 2008.

19 Were you working that day?

20 A. Yes, I was.

21 Q. Where were you working?

22 A. I was assigned to the 105 Precinct detective
23 squad.

24 Q. As a detective?

25 A. Yes.

WS

Shulman - People - direct

623

1 Q. What were your general responsibilities as a
2 detective on that particular day?

3 A. Again, I was assigned as a homicide investigator
4 and overall investigator to assist with any cases coming
5 into my office.

6 Q. Did that include interviewing victims of crimes?

7 A. Yes, it did.

8 Q. And processing paperwork?

9 A. Yes, it did.

10 Q. Did there come a time on June 23rd, 2008 that you
11 were assigned to a particular investigation?

12 A. On the morning of June 21st -- 24th, about 2:30 in
13 the morning, I was contacted by the detective bureau,
14 Queens, and informed that there was --

15 MR. SCHECHTER: Objection.

16 THE COURT: Yeah, just don't tell us what
17 they said.

18 Q. What was your tour that day?

19 A. I was working a 1627, which would be 4:27 p.m., on
20 the afternoon of June 23rd of '08 and I was working until
21 0100, 1 a.m., on the morning of the 24th.

22 Q. Without telling us the details of what you were
23 informed, what was the nature of the case that you were
24 assigned to?

25 A. It was a sexual allegation involving a 17-year-old

Shulman - People - direct

624

1 female complainant and an allegation against her stepfather.

2 Q. What was the name of that complainant?

3 A. Sana Awan.

4 Q. And who was the subject of that investigation?

5 A. Her stepfather, Harold Gopaul.

6 Q. Do you see that individual in the courtroom today?

7 THE WITNESS: Can I move, your Honor?

8 THE COURT: Yes.

9 (Witness steps down.)

10 MR. SCHECHTER: Acknowledging Mr. Gopaul.

11 THE COURT: All right, can you see

12 Mr. Gopaul, detective?

13 THE WITNESS: Yes, I do.

14 THE COURT: The record will reflect that
15 identification.

16 (Witness resumes the stand.)

17 Q. Detective, throughout the course of your tour on
18 June 23rd into the 24th on 2008, did there come a time that
19 you came in contact with this woman Sana Awan?

20 A. Yes, there did.

21 Q. Can you tell us the circumstances of your contact
22 with her?

23 A. I initially had spoken to an ACS case worker that
24 was in the precinct investigating the same matter and after
25 concluding my conversation with the ACS worker I spoke to

Shulman - People - direct

625

1 Ms. Sana Awan up in an interview room in the 105 Precinct
2 detective squad.

3 Q. What was her emotional state at the time you first
4 encountered Ms. Awan?

5 A. She seemed very scared, seemingly emotional. She
6 had some injuries to both of her arms, like welt marks on
7 both arms.

8 Q. What was it about her that led you to believe that
9 she was scared or upset?

10 A. Her demeanor and her physical actions.

11 Q. Did you have the opportunity to actually interview
12 Sana?

13 A. I did.

14 Q. And was that done in private?

15 A. Yes, it was.

16 Q. Can you tell us the nature of what she reported to
17 you?

18 MR. SCHECHTER: Objection.

19 THE COURT: Yes, sustained.

20 Q. Did she make a complaint to you?

21 MR. SCHECHTER: Objection, trying to get
22 around hearsay, Judge.

23 THE COURT: Yeah, allow it to the extent of a
24 yes or no without getting into the details of it.

25 Q. Did she inform you why she was at the precinct?

Shulman - People - direct

626

1 A. Yes, she did.

2 Q. Did she -- without telling us what she said did
3 she tell you the details of why she was at the precinct?

4 A. She did, yes.

5 Q. And did she tell you who she was referring to?

6 A. Yes, she did.

7 Q. Without telling us what she said did she describe
8 certain physical objects to you?

9 MR. SCHECHTER: Judge, at this point I got to
10 object.

11 THE COURT: Just, please, say objection.

12 MR. SCHECHTER: Objection.

13 THE COURT: Yeah, I'm going to sustain that.

14 Q. Did she give you details -- without telling us
15 what they were, did she give you details about what she was
16 reporting?

17 MR. SCHECHTER: Objection.

18 THE COURT: Yeah, overruled.

19 That's a yes or no.

20 A. Yes.

21 Q. Detective, did you memorialize your interview with
22 Ms. Awan in writing?

23 A. Yes.

24 Q. And did you memorialize -- without telling us what
25 she said, did you memorialize the details of what she told

Shulman - People - direct

627

1 you in writing?

2 A. Yes.

3 Q. Did there come a time while you were interviewing
4 Ms. Awan that the defendant came into the police precinct?

5 A. Yes.

6 Q. How were you notified about that?

7 A. Sergeant O'Hagan of the 105 Precinct contacted me
8 and informed me that Mr. Harold Gopaul had come into the
9 precinct and was taken into custody.

10 Q. Where were you when he informed you of that?

11 A. I was in my office.

12 Q. Where was Ms. Awan?

13 A. She was in my office in an interview room.

14 Q. Did there come a time when you did have contact
15 with the defendant?

16 A. Yes.

17 Q. Can you tell us when that happened?

18 A. That was June 24th at approximately 5:10 in the
19 morning.

20 Q. Was that before or after you had interviewed
21 Ms. Awan?

22 A. I had spoken to Ms. Awan prior to that and
23 subsequent to that I interviewed her again.

24 Q. Was it before or after she told you why she was --

25 MR. SCHECHTER: Objection, once again.

WS

Shulman - People - direct

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1 THE COURT: All right, Mr. Schechter. I
2 can't make a ruling unless I hear the entire question.

3 MR. SCHECHTER: Well, your Honor, I would
4 like to be heard on the record then, if I could, so --

5 THE COURT: All right, come on up here.

6 COURT OFFICER: Detective, step down, please.

7 (Witness steps down.)

8 (Sidebar conference held as follows:)

9 MR. SCHECHTER: Ms. Johnson is attempting to
10 engage in not only getting in indirectly hearsay
11 information, but she's engaging in improper bolstering
12 of Ms. Awan's testimony through this officer and that,
13 I respectfully submit, is improper and all of that line
14 of questioning with respect to his communications with
15 Sana Awan at this point is further designed to do the
16 very same thing and I haven't asked for a mistrial yet,
17 but if it keeps going I will, Judge.

18 MS. JOHNSON: Your Honor, what I was going to
19 ask him was whether or not he spoke to defendant before
20 or after he spoke to Sana Awan about why she was at the
21 precinct.

22 It's absolutely relevant that he spoke to her
23 before and she gave these details before he ever spoke
24 to the defendant, especially when he's saying these
25 statements were coerced.

WS

Shulman - People - direct

629

1 MR. SCHECHTER: She already elicited that.

2 THE COURT: All right, look, I'll allow you
3 to ask questions regarding his interaction.

4 I'm not going to allow you to get out in some
5 indirect fashion the content of what she says.

6 MS. JOHNSON: Judge, my point --

7 THE COURT: I mean, for a number of reasons.

8 MS. JOHNSON: My purpose is for the timing of
9 it, but, even so, counsel has made it quite clear
10 through his cross-examination of the victim that she
11 didn't disclose certain information to the detectives
12 so I believe it absolutely is relevant that she told
13 him those details.

14 Obviously, I respect your Honor's ruling, but
15 the fact she told him those details goes absolutely to
16 the voluntariness of his statement and the fact --

17 THE COURT: You can ask him whether or not --
18 whether or not before speaking to the defendant he had
19 interviewed Sana Awan.

20 MR. SCHECHTER: She already asked that.

21 THE COURT: I think that's already been
22 established.

23 MR. SCHECHTER: As far as what I'm doing, I
24 never alleged that what she told Detective Shulman --
25 it was only as to Moran, so what I counsel is doing is

Shulman - People - direct

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1 improper.

2 THE COURT: I think it's clear he spoke to
3 the complainant before the interviews.

4 Is that what you're looking to establish?

5 MS. JOHNSON: Not what the details were, but
6 she gave him the details of her complaint before he
7 spoke to the defendant and that's my exact question.

8 THE COURT: And you just asked him, "Did you
9 take a written statement from her? Did you memorialize
10 your conversations with her."

11 MS. JOHNSON: But then he said he wasn't done
12 interviewing her, he went back, so I just wanted to
13 make it clear that he had almost completely interviewed
14 her about the details before he spoke to the defendant.

15 THE COURT: I mean, I'll allow it just as
16 long as it doesn't start getting to the point where the
17 details become apparent.

18 MS. JOHNSON: That's my last question.

19 MR. SCHECHTER: That's what she's doing. I
20 think we reached that point and that's why I made my
21 objection.

22 MS. JOHNSON: I'll preface by saying without
23 saying any details.

24 THE COURT: I'll make my rulings.

25 (Sidebar conference concludes.)

WS

Shulman - People - direct

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1 (Witness resumes the stand.)

2 THE COURT: Ms. Johnson, do you want to
3 rephrase or repeat the question?

4 MS. JOHNSON: Yes, Judge.

5 Q. Detective Shulman, without telling us what anybody
6 told you, did you have a detailed interview with Sana before
7 you met with the defendant?

8 A. I did.

9 Q. Can you tell the jury where it was that you first
10 came into contact with the defendant?

11 A. In an interview room inside the 105 Precinct
12 detective squad.

13 Q. Can you describe for us what that interview room
14 looked like?

15 A. I'm going to guesstimate that maybe it's nine or
16 ten feet wide by maybe, you know, ten feet deep. There's a
17 couple of chairs and a table in the room in between the
18 chairs.

19 Q. And why was it that the defendant was in that
20 room?

21 A. My other interview room was occupied by Ms. Awan.

22 Q. Were they kept separate the entire time?

23 A. Yes.

24 Q. Who was in the room with the defendant when you
25 first encountered him?

WS

Shulman - People - direct

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1 A. He was in the room by himself and there was one of
2 the patrol officers from downstairs was securing the door.

3 Q. Was he handcuffed?

4 A. No, he was not.

5 Q. What was he wearing?

6 A. He was wearing some sort of bluish uniform that
7 had Ecolab patches on his arms.

8 Q. What was he doing?

9 A. He was just sitting in a chair at a table.

10 Q. Was he sleeping?

11 A. No.

12 Q. When you went into that room where was your
13 weapon?

14 A. It was locked up and secured in my office outside
15 of the interview room.

16 Q. Why?

17 A. Because I was going to interview a prisoner and
18 it's protocol not to have a weapon on you when you interview
19 a prisoner.

20 Q. Is that Police Department procedure?

21 A. Yes.

22 Q. When you went into the room to speak to the
23 defendant what was -- what did you say to him?

24 A. I introduced myself to him. I indicated to him
25 that I was conducting an investigation involving his

WS

Shulman - People - direct

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1 daughter Sana Awan and that before I questioned him I needed
2 to read him Miranda warnings.

3 Q. What was his response to you?

4 A. He acknowledged that I was going to read him
5 something and then, you know, I proceeded to read Miranda
6 warnings to him.

7 MS. JOHNSON: Your Honor, I'm going to ask
8 this be marked as People's 6 for identification
9 purposes.

10 THE COURT: People's 6 for ID.

11 (People's Exhibit 6 marked for
12 identification.)

13 (Shown to witness.)

14 Q. Detective, if you could take a look at People's 6
15 for identification.

16 Do you recognize that?

17 A. Yes, I do.

18 Q. What do you recognize it to be?

19 A. It's the original copy of the Miranda warnings
20 that I used to read the Miranda warnings to Mr. Gopaul on
21 the morning of June 24th of '08.

22 Q. How do you know that?

23 A. My handwriting appears on it as well as my
24 signature and the shield number that I affixed upon it.

25 Q. Is that the original?

Shulman - People - direct

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1 A. This is the original.

2 Q. And is it in the same or substantially the same
3 condition as it was on June 23rd 2008 -- 23rd into the 24th
4 2008?

5 A. Yes.

6 MS. JOHNSON: Your Honor, at this time we
7 offer People's 6 into evidence.

8 THE COURT: Show it to Mr. Schechter.
9 (Shown to counsel.)

10 MR. SCHECHTER: May I have a voir dire?

11 THE COURT: Yes.

12 VOIR DIRE EXAMINATION

13 BY MR. SCHECHTER:

14 Q. Detective Shulman, I notice on this piece of paper
15 there's a word yes and initials next to it.

16 Who wrote the yes?

17 A. I did.

18 Q. And who wrote the initials?

19 A. Mr. Gopaul.

20 Q. Isn't it a fact that those yeses were put on this
21 form prior to you going into the room?

22 A. Absolutely not.

23 MR. SCHECHTER: I'm going to object to this
24 document, your Honor.

25 THE COURT: All right, over objection, the

WS

Shulman - People - direct

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1 People's 6 will be received in evidence.

2 (People's Exhibit 6 received in evidence.)

3 (Shown to witness.)

4 MS. JOHNSON: Your Honor, I'm going to be
5 utilizing the overhead. I don't know, with the Court's
6 permission and the officers, if the detective could
7 step down if he can't see it from there?

8 THE COURT: So why don't you give that,
9 detective, to my officer?

10 You want to use the overhead?

11 MS. JOHNSON: Yes, Judge.

12 THE COURT: All right, detective, why don't
13 you just step down and maybe you could stand so you're
14 not blocking the jury.

15 (Witness steps down.)

16 THE COURT: Just right where you are.

17 If you need, Detective Shulman, to get closer
18 to that overhead projector you could just kind of move
19 closer back.

20 I don't know what questions Ms. Johnson is
21 going to ask, but I'm assuming at some point she's
22 going to ask you to make reference to that document.

23 DIRECT EXAMINATION CONT'D

24 BY MS. JOHNSON:

25 Q. Detective, if you could take a look at People's 6

Shulman - People - direct

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1 in evidence that's on projector?

2 Could you read for this jury how it was that you
3 read Miranda warnings to the defendant on June 24th, 2008
4 and include his responses to your questions?

5 A. Okay. I just said to Mr. Gopaul, "I'm going to
6 read to you Miranda warnings. I need for to you answer
7 clearly yes or no, you understand the questions I'm asking
8 you."

9 I then said, "Question 1. You have the right to
10 remain silent and refuse to answer questions. Do you
11 understand?"

12 Mr. Gopaul replied yes. I wrote his yes answer.

13 I then said, "Question Number 2. Anything you do
14 say may be used against you in a court of law. Do you
15 understand?"

16 Mr. Gopaul answered yes. I wrote his answer yes
17 down.

18 I said, "Question Number 3. You have the right to
19 consult an attorney before speaking to the police and to
20 have an attorney present during any questioning now or in
21 the future. Do you understand?"

22 Mr. Gopaul replied yes. I wrote his yes answer.

23 "Question 4. If you cannot afford an attorney one
24 will be provided for you without cost. Do you understand?"

25 Mr. Gopaul replied yes and I wrote his yes answer.

WS

Shulman - People - direct

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1 I said, "Question 5. If you do not have an
2 attorney available you have the right to remain silent until
3 you have an opportunity to consult with one. Do you
4 understand?"

5 Mr. Gopaul replied yes and I wrote his yes answer
6 on the paper.

7 "Question 6. Now that I have advised you of your
8 rights are you willing to answer questions?"

9 Mr. Gopaul replied yes at that time and I wrote
10 his yes answer down at that time.

11 Q. Can you tell us what this 0510 on the top right
12 hand corner is?

13 A. I wrote the time down as being 5:10 a.m. as the
14 time I was starting to read the Miranda warnings to
15 Mr. Gopaul.

16 Q. And can you tell us on the bottom of that exhibit
17 who -- can you tell us who put those markings on the bottom
18 of that card, including the defendant's name, the signature,
19 the date, the times and your information?

20 THE WITNESS: If I could just for one moment,
21 to complete my answer from the previous question, your
22 Honor?

23 THE COURT: Yes.

24 THE WITNESS: After completing all six
25 questions and Mr. Gopaul answering yes to all six

ws

Shulman - People - direct

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1 questions, I then said, "I would like you to read it
2 and make sure that your answers to these questions --
3 read it yourself."

4 I handed the piece of paper to Mr. Gopaul.
5 He said each question holding the paper up to himself.
6 He then indicated each of his answers were yes and that
7 he still wanted to speak to me.

8 I then said to Mr. Gopaul, "If those are your
9 answers, if you could please initial those as your
10 answers and if you could place your printed name and
11 signed name on the bottom that you're affirming that
12 you've been read these rights."

13 Mr. Gopaul placed his initials next to each
14 yes answer I had written. He then printed and signed
15 his name on the lower portion.

16 Upon that completion I did then sign my name
17 and place my shield number next to my name as witness
18 and then I did note the date and time that the warnings
19 were completed being read and signed.

20 Q. Is that what that 0515 means?

21 A. Yes, as indicating it's 5:15 in the morning.

22 Q. You can have a seat.

23 (Witness resumes the stand.)

24 Q. Detective Shulman, did you observe the defendant
25 look at that piece of paper prior to him signing it?

Shulman - People - direct

639

1 A. Yes, I did.

2 Q. Did you observe him mark his signature on that
3 document?

4 A. Yes, I did.

5 Q. At any time did the defendant indicate to you that
6 he no longer wished to speak with you?

7 A. No, he did not.

8 Q. At any time did he indicate he wished to speak to
9 an attorney?

10 A. No, he did not.

11 Q. At any time or -- was any physical force used upon
12 him?

13 A. No, it was not.

14 Q. Were any promises made to him?

15 A. No.

16 Q. Were his answers in English?

17 A. Yes.

18 Q. Did -- at any point did he indicate he did not
19 understand you?

20 A. No, he did not.

21 Q. At any point did he indicate to you he had a
22 question for you?

23 A. No, he did not.

24 Q. At the time that these Miranda warnings were being
25 issued to the defendant did he ever complain of pain?

Shulman - People - direct

640

1 A. No.

2 Q. Did he ever ask to receive medical attention?

3 A. No.

4 Q. Did you ever observe any injuries on him?

5 A. No, I did not.

6 Q. After People's 6 in evidence was issued to this
7 defendant can you tell us what was the next conversation you
8 had with him?

9 A. I then said to Mr. Gopaul that I also had -- that
10 the investigation concerned something to do with the vehicle
11 he was in possession with and his home and that I was going
12 to ask him -- I was going to need him to waive and give me
13 consent to search both the vehicle and the home.

14 Q. Was this before or after he signed that Miranda
15 card?

16 A. After.

17 MS. JOHNSON: Your Honor, I would ask that
18 this be marked as People's 7 for identification
19 purposes.

20 THE COURT: People's 7.

21 (People's Exhibit 7 marked for
22 identification.)

23 THE COURT: Okay.

24 Q. Detective, if you could take a look at People's 7
25 for identification.

Shulman - People - direct

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1 (Shown to witness.)

2 Q. Do you recognize that?

3 A. I do.

4 Q. What do you recognize it to be?

5 A. It is a consent form that I filled in some
6 information and then read to Mr. Gopaul when asking him to
7 consent to search the vehicle that he was the legal
8 custodian of at the time.

9 Q. How do you know that?

10 A. My handwriting appears on the top on the portions
11 that I filled in and after Mr. Gopaul said he acknowledged
12 what I was reading to him, he did print and sign his name on
13 the bottom.

14 He did date -- he did place the date and time and
15 then I did affix my signature and my shield number as
16 witness to his signature.

17 Q. Is that the original?

18 A. Yes, it is.

19 Q. Is it in the same or substantially the same
20 condition it was on June 24th, 2008?

21 A. Yes, it is.

22 MS. JOHNSON: Your Honor, we offer People's 7
23 into evidence.

24 MR. SCHECHTER: May I see the document,
25 please, your Honor?

ws

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1 THE COURT: Yes.

2 (Shown to counsel.)

3 MR. SCHECHTER: May I have a voir dire?

4 THE COURT: Yes.

5 VOIR DIRE EXAMINATION

6 BY MR. SCHECHTER:

7 Q. Now, Detective Shulman, this document was executed
8 subsequent to the Miranda warnings, is that correct?

9 A. Yes.

10 MR. SCHECHTER: On that basis I'm going to
11 object to this document, Judge.

12 THE COURT: All right, over objection,
13 People's 7 will be received in evidence.

14 (People's Exhibit 7 received in evidence.)

15 Q. Detective Shulman, subsequent means after, right?

16 A. That's correct.

17 MS. JOHNSON: I'm going to ask to put that on
18 the projector again.

19 THE COURT: Do you need him to step down
20 again?

21 MS. JOHNSON: It's up to the detective if he
22 can see or he can't see.

23 THE COURT: I don't think he's going to see
24 it from where he's sitting.

25 MS. JOHNSON: With the Court's permission --

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1 THE COURT: Detective, why don't you just
2 step down here like you did before --

3 (Witness steps down.)

4 Q. Detective Shulman, can you tell the members of the
5 jury what is depicted on People's 7 in evidence and how it
6 was that the defendant was advised of his rights with that
7 consent form?

8 A. Okay, I had a pre-printed consent form that is
9 used in the regular course of police business.

10 I wrote in Mr. Gopaul's name in my handwriting. I
11 wrote in the vehicle information on the vehicle that I was
12 informed that he was using and that he was in possession of.

13 After filling in some of those blanks I then said
14 to Mr. Gopaul, "I'm going to read you a consent form to
15 search your vehicle and I read, you know, 'I, Harold Gopaul,
16 am the owner/legal custodian of a 2006 Dodge Ram
17 model vehicle bearing license plate number 22726J, as in
18 John, V, as in Victor," I believe it says, and, "'VIN number
19 1D, as in David, 7H, as in Henry, A, as in Adam, A -- '"

20 THE WITNESS: I'm having a hard time reading
21 it on this screen, your Honor?

22 THE COURT: Yes, why don't you just pick it
23 up?

24 Members of the jury, all of these exhibits
25 that are received in evidence, just so you know, will

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1 be available to you during your deliberations, so I
2 don't want you to think that you won't be able to see
3 it, touch it, so.

4 Go ahead, detective.

5 A. Again, VIN number 1D, as in David, 7H, as in
6 Henry, A, as in Adam, 16N, as in Nancy, X, as in x-ray, 6J,
7 as in John, 220067.

8 Q. Will you be able to see the rest?

9 A. Yeah, I just couldn't read those particular
10 numbers.

11 Q. And what did you advise the defendant?

12 A. Okay, "Which is currently located at the side of
13 the 105 Precinct."

14 I then said to Mr. Gopaul, "I have been duly
15 advised of my rights to one, refuse such consent; two,
16 require that a search warrant be obtained prior to any
17 search; three, that if I do consent to a search any evidence
18 found as a result of such search can and will be used
19 against me in any criminal proceeding; four, that I may
20 withdraw my consent to search any time prior to this
21 conclusion."

22 I then read, "I knowingly, intelligently and
23 voluntarily waive my above rights and consent and authorize
24 Detective," and I wrote my name, "Shulman or his duly
25 authorized agent of the New York City Police Department to

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1 conduct said search."

2 Q. And what happened after you read that to the
3 defendant?

4 A. Okay, Mr. Gopaul then verbally said to me that he
5 consented to me searching the vehicle.

6 I then said, "I would like to you read this
7 yourself so that you understand what I just read to you and
8 that you are voluntarily waiving your rights to me."

9 I handed the piece of paper to Mr. Gopaul and he
10 read the piece of paper, after which he again said, "Yes, I
11 consent."

12 I then said, "If you could please print and sign
13 your name on the lower portion," which he then did write the
14 date and time that he was signing it and then I signed my
15 signature and placed my shield number as witness.

16 Q. It was the defendant that wrote the date and the
17 time?

18 A. That is correct.

19 Q. And you observed that?

20 A. Yes, I did.

21 Q. You also observed him put his name and his
22 signature on there?

23 A. Yes, I did.

24 Q. You can have a seat.

25 (Witness resumes the stand.)

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1 Q. Detective Shulman, at any time while the defendant
2 was being asked to consent to search his vehicle did he ask
3 to speak to an attorney?

4 A. No.

5 Q. At any time did he indicate to you he no longer
6 wished to speak with you?

7 A. No.

8 Q. Did he ever indicate to you he no longer wished to
9 consent for you to search his vehicle?

10 A. No.

11 Q. At any time did you make any promises to him
12 during that period of time?

13 A. No, I did not.

14 Q. Any physical force used upon him?

15 A. No.

16 Q. Was he handcuffed?

17 A. No, he was not.

18 Q. Where was your gun?

19 A. It was still locked up and secured out in my
20 office.

21 Q. After that form was signed by the defendant what
22 did you do next?

23 A. Actually, I believe prior to that form I had read
24 Mr. Gopaul a consent to search his home.

25 MS. JOHNSON: Your Honor, I would ask that

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1 this be marked as People's Exhibit 8 for
2 identification.

3 (People's Exhibit 8 marked for
4 identification.)

5 Q. Detective Shulman, do you recognize
6 People's 8 for identification?

7 A. I do.

8 Q. What do you recognize it to be?

9 A. It is the original consent to search form that I
10 prepared on June 24th of '08 that I read to Mr. Gopaul that
11 he waived -- giving consent to search his home.

12 Q. How do you know that that's it?

13 A. My handwriting appears on the boxes that I filled
14 in. I observed Mr. Gopaul sign his name and I also affixed
15 my signature and shield number as witness after it was
16 complete.

17 Q. Is that the original?

18 A. This is the original.

19 Q. And is it in the same or substantially the same
20 condition it was on June 24th, 2008?

21 A. Yes, it is.

22 MS. JOHNSON: Your Honor, I would offer
23 People's 8 into evidence.

24 MR. SCHECHTER: May I have a look at that?

25 THE COURT: Yes.

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1 (Shown to counsel.)

2 MR. SCHECHTER: May I have a voir dire?

3 THE COURT: Yes.

4 VOIR DIRE EXAMINATION

5 BY MR. SCHECHTER:

6 Q. Detective Shulman, was this paper executed after
7 the original Miranda warnings were issued?

8 A. Yes.

9 MR. SCHECHTER: Respectfully object, your
10 Honor.

11 THE COURT: Over objection, People's 8 will
12 be received in evidence.

13 (People's Exhibit 8 received in evidence.)

14 THE COURT: Okay, Ms. Johnson.

15 DIRECT EXAMINATION CONT'D

16 BY MS. JOHNSON:

17 Q. I'm sorry, I'm going to have to ask you to step
18 down again.

19 (Witness steps down.)

20 Q. Detective, I'm putting on the overhead People's 8
21 in evidence.

22 Can you tell the members of the jury how it was
23 that you read those warnings to the defendant on June 24th,
24 2008, including his responses both verbal and written?

25 A. Okay, I stated to Mr. Gopaul that I was going to

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1 read him a pre-printed consent form and asking his consent
2 to search his home in regards to my investigation.

3 I then wrote in his name and his home address and
4 then I read to him, after filling in those blanks in my
5 handwriting, "I, Harold Gopaul, having been requested to
6 consent to a search of my home, located at 242-10 89th
7 Avenue, Bellerose, New York, 11426, and having been duly
8 advised of my Constitutional rights to: A, refuse such
9 consent; B, to require that a search warrant be obtained
10 prior to any search; C, that if I do consent to a search any
11 evidence found as a result of such search can and will be
12 used against me in any civil or criminal proceedings."

13 Q. Can you see?

14 A. Move it down a little bit.

15 Q. Good?

16 A. Good.

17 "D, that I may consult with an attorney of my
18 choosing before or during the search; and that, E, I may
19 withdraw my consent to a search at any time prior to prior
20 to its conclusion."

21 I then read, "After having been advised of my
22 Constitutional rights I hereby knowingly, intelligently and
23 voluntarily waive my above rights and consent to search. I
24 authorize," I then wrote in my handwriting,

25 "Detective Shulman or authorized representative of the

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1 NYPD," and I then read, "to conduct a complete search of the
2 above-described location, premise, residence, apartment."

3 Mr. Gopaul indicated that he was willing to
4 consent to that search.

5 I then handed him the piece of paper and again
6 asked him if he would read it and be sure that he understood
7 what it said and that if he still wanted to give consent or
8 not.

9 Mr. Gopaul read over the piece of paper and again
10 affirmed that he was giving consent to me.

11 I then asked him to place his signature on the
12 bottom portion of the consent form.

13 Mr. Gopaul then signed his name. He then wrote
14 the date and time. He then wrote where we were and then I
15 signed my name and affixed my shield number as witness to
16 his affirmation of consent.

17 Q. Whose handwriting is that 105 detective squad in?

18 A. Mr. Gopaul's.

19 Q. And whose handwriting is the date and the time,
20 5:20, 6/24/2008?

21 A. Mr. Gopaul's.

22 Q. And did you observe him write that?

23 A. Yes, I did.

24 Q. Was that form executed before or after the vehicle
25 consent form and if you need to look at them --

WS

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1 A. It was after Miranda, but before the vehicle.

2 Q. At any time did the defendant indicate to you he
3 wished to withdraw that consent?

4 A. No.

5 Q. At any time did he indicate to you he wished to
6 speak to an attorney?

7 A. No.

8 Q. Was any physical force used upon him?

9 A. No.

10 Q. Any threats made to him?

11 A. No.

12 Q. Any promises?

13 A. No.

14 Q. Where was your weapon?

15 A. It was still locked up outside of the interview
16 room, outside in my office.

17 Q. At any time did the defendant indicate he didn't
18 understand what you were asking him?

19 A. No, he did not.

20 Q. And, I'm sorry, I don't know if I asked you, did
21 he ever ask to speak to an attorney?

22 A. No, he did not.

23 Q. After that form, People's 8, was executed what did
24 you do next?

25 A. At that point I needed to take a break to do

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1 something else. I subsequently came back into the interview
2 room.

3 Q. When you say you went back into the interview
4 room, which interview room?

5 A. After that -- those consent forms and the Miranda
6 forms, I went and did other duties. I had some other
7 conversation with Ms. Awan and then I subsequently went back
8 into the interview room where Mr. Gopaul was waiting.

9 Q. When you went back into the interview room what
10 was the defendant doing?

11 A. He was sitting in a chair at a table. He was
12 awake and looked up when I walked into the room.

13 Q. Who was with him?

14 A. He was by himself.

15 Q. Was he handcuffed?

16 A. No, he was not.

17 Q. Where was your weapon?

18 A. It was still locked up and secured outside my
19 office.

20 Q. What did you say to the defendant when you came
21 back into the interview room?

22 A. When I came back into the interview room I said to
23 Mr. Gopaul that if he knows why he was here and why he was
24 under arrest.

25 Q. What was his response to you?

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1 A. His response is that he had a dispute with his
2 daughter on the past Saturday and he slapped her.

3 Q. What did you say to him after he made that
4 statement to you?

5 A. I asked him if he would be willing to make a
6 written statement in regards to what had transpired with his
7 daughter.

8 He said yes.

9 I then handed him a notepad and a pen and I asked
10 him to put his name and address and the date and time on the
11 top and to write down what he wanted to write down about
12 what had occurred.

13 Q. That was a blank piece of paper you handed him?

14 A. Yes, it was.

15 MS. JOHNSON: Your Honor, I'm going to ask
16 this be marked as People's Exhibit 8 --

17 THE COURT: 9.

18 MS. JOHNSON: -- 9 for identification.

19 (People's Exhibit 9 marked for
20 identification.)

21 Q. Detective, will you take a look at People's 9 for
22 identification?

23 (Shown to witness.)

24 Q. Do you recognize that?

25 A. Yes, I do.

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1 Q. What do you recognize that to be?

2 A. It is the original copy of one of the written
3 statements that Mr. Harold Gopaul wrote in my presence
4 while -- on June 24th, '08 in the interview room at the
5 105 Precinct detective squad.

6 Q. How do you know that?

7 A. I witnessed it being written and upon its
8 completion I affixed my signature along with my shield
9 number and I noted the date and time that it was complete.

10 Q. That's the original?

11 A. This is the original.

12 Q. Is it in the same or substantially the same
13 condition it was on June 24th, 2008?

14 A. Yes, it is.

15 MS. JOHNSON: Your Honor, at this time we
16 would offer People's 9 into evidence.

17 MR. SCHECHTER: May I look at the document,
18 please, your Honor?

19 (Shown to counsel.)

20 MR. SCHECHTER: May I have a voir dire?

21 THE COURT: Yes.

22 VOIR DIRE EXAMINATION

23 BY MR. SCHECHTER:

24 Q. Officer, was this document extracted from the
25 defendant after you advised him of his Miranda warnings?

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1 A. I don't think that I like the word extract.

2 Q. All right --

3 A. This statement was written after the Miranda
4 warnings were issued and waived.

5 MR. SCHECHTER: Objection, your Honor.

6 THE COURT: All right, over objection,
7 People's 9 will be received in evidence.

8 (People's Exhibit 9 received in evidence.)

9 MS. JOHNSON: Your Honor, with the Court's
10 permission, I'm going to ask that be displayed on the
11 overhead.

12 If we can mark for ID an exact duplicate I'll
13 show it to counsel so he can read along better.

14 THE COURT: What is it that you want to mark?

15 MS. JOHNSON: Just for ID. I would like the
16 detective to read from it, but I don't believe he's
17 going to be able to read that well from the overhead.

18 THE COURT: Just show what you want him to
19 read from to Mr. Schechter.

20 (Shown to counsel.)

21 MR. SCHECHTER: No problem, no problem.

22 THE COURT: No objection to marking the copy
23 what, People's 10 for ID?

24 MS. JOHNSON: Sure.

25 THE COURT: Is that what you want?

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1 MS. JOHNSON: Yes.

2 (People's Exhibit 10 marked for
3 identification.)

4 (Shown to witness.)

5 THE COURT: All right, Ms. Johnson.

6 Q. Detective Shulman, if you could take a look at
7 People's 9 in evidence?

8 Can you read that for the members of the jury?

9 THE COURT: Well, he's got People's 10.

10 Q. I'm sorry, People's 10?

11 THE COURT: Which you've indicated is a
12 photocopy of People's 9 in evidence that's on the
13 projector.

14 MS. JOHNSON: Yes, your Honor, and I've shown
15 a copy to counsel.

16 THE COURT: All right.

17 Do you want the detective to read it?

18 MS. JOHNSON: Yes, please.

19 A. Okay, upon being given a blank notepad and a pen,
20 Mr. Gopaul wrote his name, his address, his phone numbers
21 and the date and time on the top.

22 He wrote, Harold Gopaul --

23 Q. You can continue?

24 A. -- 242-10 89th Avenue, Bellerose, New York, 11426.

25 He wrote a phone number of 718-470-0899. He then wrote cell

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1 and the number 917-392-8334. Mr. Gopaul wrote the date
2 6/24/08 and wrote the time 6:25 a.m.

3 Mr. Gopaul then wrote, "Saturday 6/22/08 my family
4 had gone to St. Gregory fair to have some fun. My eldest
5 daughter was in line for a ride called Zipper. After about
6 20 or 25 minutes my daughter and friend time came. There
7 was a single lad in front of the line. The operator told
8 the kid two people need to go on one basket, so her friend
9 decided to go with the kid so my daughter will have to wait
10 for the other ride and only if she got a partner.

11 "Previous to going to the fair my wife very bad
12 pain on a root canal she did few years ago and was ready to
13 leave the fair. She was also having problems to speak. So
14 I called my daughter out the line because I thought it was
15 not fair to wait another 20 or 25 minutes for a ride knowing
16 her mother was in pain. After calling my daughter out the
17 line she was really upset. When we went home my daughter
18 started to argue and I thought it was wrong and I put a few
19 slaps on her as a little discipline. Sunday everything was
20 okay. We all work in the backyard putting up a fence. I
21 left my house on Monday day, 6/23," looks like '06, "4:30
22 a.m. and return about 2:30 a.m. Tuesday after work and my
23 daughter was missing and back door of the house was open. I
24 came -- " he signed Harold Gopaul on the bottom and wrote to
25 be continued on second page.

ws

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1 On the second page Mr. Gopaul wrote his name on
2 the top and dated it 6/24/08 and continued to write, " -- to
3 the district precinct and I was held and search. Also, I
4 was read to me and ask to sign three sets of documents.
5 Also, to write this report. I was read my rights and was
6 asked to what had happened with my daughter."

7 After Mr. Gopaul had written this statement I
8 asked him to read it over, if there was any corrections he
9 wanted to make or any additions or changes he needed to make
10 to the document, and he looked it over.

11 On Page 1, up on the top where he had indicated
12 the date, he scribbled over a 2 indicating a 1, that he was
13 saying the date was 6/21.

14 There was a few other spots that he didn't like
15 what it said and he put a little scribble mark on it, that
16 he didn't like the word, and then after he had made a couple
17 of corrections that he didn't like he indicated that the
18 statement was correct as to what he wanted to say.

19 I then asked Mr. Gopaul if he could sign the end
20 of the statement. He signed his name. I then did sign my
21 name and place my shield and I did write the date and time
22 as indicating when this statement was complete.

23 Q. Is that what we see here on Page 2, detective?

24 You have an exact duplicate.

25 A. Oh, yes.

WS

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1 Q. Is there any handwriting on those two pages in
2 evidence that are not the defendant's?

3 A. Yes.

4 Q. What?

5 A. On Page 2 there is my signature, my shield number
6 and my writing of the date and time and on Page 1 is all the
7 defendant's handwriting.

8 Q. Other than that, is there anything else that
9 you've marked on those two pages?

10 A. No.

11 Q. Thank you.

12 Prior to the defendant making that written
13 statement did you tell him the details of what Sana informed
14 you of?

15 MR. SCHECHTER: Objection.

16 THE COURT: No, overruled, I'll allow it.

17 MR. SCHECHTER: Exception, Judge.

18 THE COURT: That's a yes or no.

19 A. No.

20 Q. Did you show the defendant, prior to him making
21 that statement, any paperwork that -- involving your
22 interview with the complainant?

23 A. No.

24 Q. After the defendant made that two-page statement
25 what did you do next -- I'm going to withdraw that for one

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1 second.

2 While he was writing that at any time did he ask
3 to speak to an attorney?

4 A. No.

5 Q. At any time did you use any physical force on him?

6 A. No.

7 Q. At any time did he indicate he no longer wished to
8 speak to you?

9 A. No, he did not.

10 Q. At any time did he indicate he wanted medical
11 attention?

12 A. No, he did not.

13 Q. At any time did he indicate that he wanted to go
14 to the hospital?

15 A. No, he did not.

16 Q. Did you observe any injuries on him?

17 A. I did not.

18 Q. Did anybody else come into the room?

19 A. No.

20 Q. Where was your weapon?

21 A. It was still locked up in my office.

22 Q. Did there come a time when the defendant asked to
23 use the bathroom?

24 A. Yes.

25 Q. Was that at this point or later on?

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1 A. At the completion of that statement Mr. Gopaul
2 asked me if he could use the restroom. I told him, "Yes,
3 give me one second." I came and took my paperwork out of
4 the office.

5 I came into the -- back into the interview room.
6 I handcuffed him. I brought him to the restroom. When he
7 was in the restroom the handcuffs were taken off so he could
8 do what he needed to do.

9 When he was done and he washed his hands, the
10 handcuffs were placed back on and Mr. Gopaul was brought
11 back into the interview room where the handcuffs were taken
12 off again and he sat down in a chair.

13 Q. What happened at that point?

14 A. At that point I took a break.

15 Q. Where did you go?

16 A. I -- various other duties in my office.

17 Q. Did there come a time when you came back to the
18 room where the defendant was?

19 A. There did.

20 Q. What was he doing?

21 A. He was sitting in a chair leaning on the table.
22 He was awake. He looked up when I walked in the room.

23 Q. Was he wearing -- did he have handcuffs on?

24 A. He did not.

25 Q. Where was your weapon when you came back into the

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1 room?

2 A. It was still locked up in my office.

3 Q. Between the time you left and you came back did
4 you have any further conversation with Sana?

5 A. I believe I did, yes.

6 Q. Was that a further interview of her?

7 A. Yes.

8 Q. When you came back into the room what did you say
9 to defendant?

10 A. I came in. I said, "You know, your daughter Sana
11 is making an allegation that there's some inappropriate
12 behavior involving you."

13 Q. Were those the words that you used, inappropriate
14 behavior?

15 A. I believe so.

16 Q. Did you -- I'm sorry, continue?

17 A. And I wasn't going to tell him what they were, but
18 if he wanted to make a statement on it, that he could.

19 Q. Did you tell him -- did you tell the defendant you
20 weren't going to tell him any other information?

21 A. Yes.

22 MR. SCHECHTER: Objection to the leading,
23 your Honor.

24 THE COURT: Well, I'll allow it. Overruled.

25 A. I did tell him that I wasn't going to tell him

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1 what the nature of the allegation was.

2 Q. Did you show him any paperwork?

3 A. I did not.

4 Q. Did you tell him the details?

5 A. No, I did not.

6 Q. What happened next?

7 A. Mr. Gopaul said he wanted to say something about
8 it. He felt bad about it and he wanted to make a statement.

9 I then said, you know, "Would you be willing to
10 make a written statement about whatever you want to tell
11 me," and he indicated yes.

12 Q. What did you provide him with?

13 A. I then provided him with a blank notepad and a
14 pen. I asked if he would, you know, write his name and
15 address and the date and time on the top and then write what
16 he wanted to write on the paper.

17 Q. Was this before or after the Miranda card had been
18 signed?

19 A. It was after.

20 Q. Was this before or after the consent forms had
21 been executed?

22 A. After.

23 Q. And was it before or after the statement that
24 happened at the fair that's already in evidence?

25 A. After.

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1 MS. JOHNSON: Your Honor, I'm going to ask
2 that this be marked as People's 11 for identification.

3 THE COURT: 11 for ID.

4 (People's Exhibit 11 marked for
5 identification.)

6 (Shown to witness.)

7 Q. Detective, could you take a look at People's 11
8 for identification?

9 MR. SCHECHTER: May I look at the document,
10 please?

11 THE COURT: Well, let's see if she offers it
12 in evidence.

13 Q. Do you recognize that?

14 A. I do.

15 Q. What do you recognize it to be?

16 A. It is the original written statement written by
17 Mr. Harold Gopaul on June 24th of 8 -- of '08 in my
18 presence.

19 Q. How do you know that?

20 A. It was prepared in my presence and upon its
21 completion I did affix my signature and my shield number and
22 I did note the date and time in my handwriting as witness.

23 Q. Is it in the same or substantially the same
24 condition it was on June 24th of 2008?

25 A. Yes.

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1 Q. And that's the original?

2 A. This is the original.

3 MS. JOHNSON: Your Honor, we would offer that
4 into evidence.

5 THE COURT: All right, show it to
6 Mr. Schechter.

7 (Shown to counsel.)

8 MR. SCHECHTER: May I have a voir dire,
9 Judge?

10 THE COURT: Yes.

11 VOIR DIRE EXAMINATION

12 BY MR. SCHECHTER:

13 Q. Detective Shulman, this document was obtained from
14 Mr. Gopaul approximately three and a half hours from the
15 time you advised him of his rights?

16 Would you like the document back?

17 A. If I could just take a look at it real quick?

18 I think it was probably about two and a half hours
19 after the Miranda warnings, if I believe the time on it.

20 THE COURT: Do you want him to look at it?

21 Q. Let me ask this. Maybe it will make it easier.

22 Were the Miranda warnings administered at
23 5:10 a.m.?

24 A. Yes.

25 Q. And if this document says 8:30 a.m., would that

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1 refresh your recollection about this being done three and a
2 half hours, or thereabouts, after the Miranda warnings were
3 administered?

4 A. I believe 8:30 is when that document, I believe,
5 is complete, not when it started.

6 Q. When it's completed?

7 A. I believe that Mr. Gopaul, around 7:25 --

8 Q. Objection, that's not what I asked you.

9 THE COURT: Just rephrase the question.

10 Q. This document was completed at 8:30 a.m. in the
11 morning, correct?

12 A. Yes.

13 Q. And that's over three and a half hours after you
14 had Mr. Gopaul execute a Miranda warning?

15 MS. JOHNSON: Objection, your Honor, as to
16 the voir dire aspect.

17 THE COURT: Yeah, sustained.

18 MR. SCHECHTER: I'm going to object to this
19 document, your Honor, for the same reasons I objected
20 to everything else.

21 THE COURT: All right, over objection,
22 People's 11 will be received in evidence.

23 (People's Exhibit 11 received in evidence.)

24 MS. JOHNSON: If I could have that shown
25 to -- you know what, Judge?

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1 If I can, I'll show Mr. Schechter, I have an
2 exact duplicate, just so he can read it.

3 (Shown to counsel.)

4 MS. JOHNSON: Your Honor, I would ask this be
5 marked as People's 12 for identification.

6 THE COURT: All right, People's 12 will be
7 marked for ID as a photocopy of People's 11 in
8 evidence.

9 (People's Exhibit 12 marked for
10 identification.)

11 MR. SCHECHTER: We're marking People's 12?

12 THE COURT: For ID as a photocopy of People's
13 11 in evidence.

14 MR. SCHECHTER: Okay.

15 (Shown to witness.)

16 DIRECT EXAMINATION CONT'D

17 BY MS. JOHNSON:

18 Q. Detective Shulman, if you can tell us -- if you
19 can read for us what's been marked into evidence as
20 People's 12 from your copy -- did I mess that up?

21 People's 11 in evidence, but you're reading from
22 People's 12.

23 THE COURT: People's 12, which is a photocopy
24 of People's 11 in evidence.

25 A. Okay, Mr. Gopaul wrote Harold Gopaul,

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1 242-10 89th Avenue, Bellerose, New York, 11426. He wrote
2 the date as 6/24/08 and he wrote the time as 7:30 a.m.

3 Mr. Gopaul then wrote, "I, Harold Gopaul, is
4 writing of this of my own free will. The accusation that
5 was made toward me and my daughter, it started about the end
6 of 2006 where we both got into a relationship where I would
7 touch her vagina and breast and she would touch my penis and
8 we would both kiss. It happened about five or six times
9 total, once at 400 Community Drive and in our home. I want
10 you to know I wish it had never happened. I am a
11 hard-working husband and father. I work sometimes 80 to 95
12 hours per week to keep my family together. I admit what
13 happened was very, very wrong. Also admit I need help.
14 Something happened that should never have happened. I am
15 very sorry. I will accept any help I can get. I don't want
16 to be away from my family. My daughter, Sana Awan, is the
17 person I am talking about."

18 After Mr. Gopaul wrote this I asked him to read it
19 over and see if there was any corrections he wished to make
20 or anything he wanted to add to the story that, you know,
21 that he hadn't previously written.

22 He indicated that the story was accurate as to
23 what he wanted it to say. He then signed his name at the
24 end of his statement.

25 I then signed my name and placed my shield number

ws

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1 and I wrote the date and time at the completion of the
2 statement.

3 Q. Detective, at any time did the defendant indicate
4 to you that he wanted to speak to an attorney?

5 A. No, he did not.

6 MS. JOHNSON: Can I just get that exhibit
7 back?

8 (Shown to counsel.)

9 Q. At any time did he indicate to you that he no
10 longer wished to speak with you?

11 A. No, he did not.

12 Q. Was any physical force used upon him while he was
13 writing that statement?

14 A. No, it was not.

15 Q. Any threats made of him?

16 A. No, they were not.

17 Q. Any promises?

18 A. No.

19 Q. Where was your weapon?

20 A. It was still locked up out in my office.

21 Q. Is there any part, other than signature in that
22 document, that is not in the defendant's handwriting?

23 A. The date and time, but other than that, no.

24 Q. Did you tell the defendant what information to put
25 in that statement?

WS

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1 A. I did not.

2 Q. Detective Shulman, what happened after the
3 defendant made that statement?

4 A. I -- upon completion of that statement I then did
5 immediately offer a verbal question to him. I asked him if
6 he had vibrators in his car or in his house, to which
7 Mr. Gopaul replied that he has two vibrators in his house
8 and a body massager in his car, but that the body massager
9 is for his own personal use and he hadn't used it on his
10 daughter.

11 Q. Was that conversation memorialized in any way?

12 A. It was.

13 Q. How?

14 A. After that question was asked and his answer was
15 given I then wrote on a blank piece of paper, indicating
16 what the question I had read to him was and what his answer
17 was.

18 I then showed that to Mr. Gopaul and he affirmed
19 that what I had written as the question and answer were
20 accurate as to the question and answer that had just
21 occurred.

22 He drew a picture on the corner of the paper as to
23 what the vibrators in the house he was describing looked
24 like.

25 Q. Who drew that picture?

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1 A. Mr. Gopaul.

2 I then wrote underneath that that it was his
3 picture, that it was his depiction, his drawing, in my
4 handwriting indicating that he had drawn it.

5 I then had him look at it again; that the question
6 and the answer and what I had written underneath the drawing
7 that he made, that it was accurate to what had transpired
8 and Mr. Gopaul indicated yes, it was.

9 I then asked him to sign the document and then I
10 signed the document as witness.

11 MS. JOHNSON: Your Honor, I'm going to ask
12 that this be marked as People's 12 for identification.

13 THE COURT: 13.

14 MS. JOHNSON: 13, I'm sorry. I can't count
15 today.

16 THE COURT: 13 for ID.

17 (People's Exhibit 13 marked for
18 identification.)

19 (Shown to witness.)

20 Q. Detective, if you could take a look at that?
21 Do you recognize it?

22 A. I do.

23 Q. What do you recognize it to be?

24 A. It is the original copy of the question and answer
25 that I wrote in regards to my conversation with Mr. Gopaul.

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1 Q. As well as the picture you just told us about?

2 A. That's correct.

3 Q. How do you know that that's what you describe it
4 to be and that's the original?

5 A. The question and answer are written in my
6 handwriting. I wrote it. I was present when Mr. Gopaul
7 viewed it and signed it and I also placed my signature and
8 shield number as witness to what was written on the paper.

9 Q. Is that in the same or substantially the same
10 condition it was on June 24th, 2008?

11 A. Yes.

12 MS. JOHNSON: Your Honor, at this time we
13 would offer that into evidence.

14 MR. SCHECHTER: May I see it?

15 THE COURT: Yes.

16 (Shown to counsel.)

17 MR. SCHECHTER: May I have a voir dire?

18 THE COURT: Yes.

19 VOIR DIRE EXAMINATION

20 BY MR. SCHECHTER:

21 Q. Was this statement made after the initial
22 admonition of rights at 5:10 a.m. in the morning?

23 A. This statement was after the Miranda warnings were
24 asked and waived by Mr. Gopaul, yes.

25 MR. SCHECHTER: Same objection, Judge.

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1 THE COURT: All right, over objection,
2 People's 13 will be received in evidence.

3 (People's Exhibit 13 received in evidence.)

4 MS. JOHNSON: Will you mark this 14?

5 THE COURT: People, you're asking for another
6 photocopy to be marked?

7 MS. JOHNSON: Yes, your Honor, I've provided
8 a copy to Mr. Schechter as well.

9 THE COURT: People's 14 for ID only as a
10 photocopy of People's 13 in evidence.

11 (People's Exhibit 14 marked for
12 identification.)

13 Q. Detective Shulman, can you take a look at the
14 identification document before you?

15 MS. JOHNSON: And I provided People's 13 in
16 evidence on the overhead.

17 Q. Detective, can you read for us what's indicated in
18 that document?

19 A. I wrote the time as 0830 hours on 6/24 of '08. I
20 wrote Q, as indicative of question, "Do you have any
21 vibrators in the car?"

22 I wrote A for the answer that was responded, "He
23 states he has multiple vibrators in the house. Two are
24 white and look the same. They are in a cabinet in the
25 bedroom at the house. He has a white fold-up massager in

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1 the car that he uses for his neck. He claims never to have
2 used it on his daughter."

3 On the left top corner there's a picture that
4 Mr. Gopaul is describing the vibrators that he's describing
5 and I drew an arrow pointing from what I was writing towards
6 the picture and I wrote, "Subject drew this picture as shape
7 of white vibrators."

8 Q. Did you observe the defendant draw that picture?

9 A. I did.

10 Q. At any time did he indicate he wanted to make any
11 chances to that photograph -- to that picture?

12 A. No.

13 Q. At any time did he ask to speak to an attorney?

14 A. No.

15 Q. At any time was any physical force used upon him?

16 A. No.

17 Q. Where was your gun?

18 A. It was still locked up out in my office.

19 Q. At any time did he indicate he no longer wished to
20 speak with you?

21 A. No, he did not.

22 Q. Did you observe any injuries upon him?

23 A. No.

24 Q. Did he ask for medical attention?

25 A. No.

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1 Q. Did he complain of pain?

2 A. No.

3 Q. Thank you.

4 (Shown to counsel.)

5 Q. Were any promises made to him?

6 A. No.

7 Q. Detective Shulman, after that document was
8 executed in the presence of the defendant and after he made
9 that -- he drew that picture, what did you do next?

10 A. After that was drawn and the things were written I
11 asked him to review it; that it was accurate for the
12 question and the answer that had transpired and the picture
13 he drew and the comment I made in regards to the picture he
14 drew.

15 Mr. Gopaul indicated to me it was accurate.

16 I then asked him to sign his name and then I
17 signed my name as witness to that.

18 Q. Was that the end of your contact with the
19 defendant?

20 A. No.

21 Q. What happened next?

22 A. At that point I took a break. I had various other
23 duties to perform in regards to the investigation.

24 At some point in time I came back into that same
25 interview room sometime, you know, later in the day and I

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1 asked Mr. Gopaul if he would be interested in making a
2 videotaped statement in the presence of the Queens District
3 Attorney's Office and Mr. Gopaul said that he wouldn't have
4 any problem with that and he would be willing to do that.

5 Q. Was this after or before all those statements were
6 signed by the defendant?

7 A. After.

8 Q. And was it before or after that Miranda card was
9 signed by him?

10 A. After.

11 Q. Did there come a time when the Assistant District
12 Attorneys came to the precinct?

13 A. Yes.

14 Q. And when they came what did the defendant say and
15 where did you bring him?

16 A. Mr. Gopaul at that point was brought into a larger
17 interview room in my office where a videographer from the
18 Queens DA's Office had come and was setting up to film, you
19 know, the videotaped statement.

20 Q. Up until that point did you ever show the
21 defendant any statements that Sana had given to you?

22 A. No, I had not.

23 Q. Did you give him any of the details of what she
24 had told you?

25 A. I had not.

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1 Q. Did you tell him the questions that the prosecutor
2 was going to be asking him on video?

3 A. I did not.

4 Q. Were you present for that video?

5 A. Yes, I was.

6 Q. Were you present for the entirety of it?

7 A. Yes, I was.

8 Q. At any time did the defendant indicate he wanted
9 to speak to an attorney?

10 A. He did not.

11 Q. At any time did he indicate he did not want to
12 speak to the prosecutors?

13 A. He did not.

14 Q. Did he complain of any injury?

15 A. No, he did not.

16 Q. Were any promises made to him?

17 A. No, they were not.

18 Q. Where was your gun?

19 A. It was still locked up outside in my office.

20 Q. Did the prosecutors have any weapons with them?

21 A. No, they did not.

22 Q. Was any physical force used upon the defendant?

23 A. No, it was not.

24 Q. Detective, over the course of your career with the
25 New York City Police Department have you had occasions where

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1 subjects in custody have not given you written confessions?

2 A. Yes, I have.

3 Q. And have you had occasions throughout the course
4 of your career where subjects have not given you videotaped
5 confessions?

6 A. More often than not, video statements are not made
7 in most cases.

8 Q. Have you had occasions over the course of your
9 career where written confessions are given you, but video
10 confessions are not?

11 MR. SCHECHTER: I'm going to object, Judge.

12 THE COURT: Yeah, I'm going to sustain at
13 this point.

14 Q. After that videotape was taken did you have any
15 further contact with the defendant?

16 A. Very briefly when he was being brought out of my
17 office and then court proceedings.

18 Q. I'm referring to any additional substantive
19 conversations with him other than movement of where he was
20 going?

21 A. No.

22 Q. Did you ever tell the defendant what information
23 to provide?

24 MR. SCHECHTER: I'm just going to object now
25 to the constant leading.

ws

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1 THE COURT: All right, Mr. Schechter, please.

2 MR. SCHECHTER: Objection.

3 THE COURT: You have an objection?

4 MR. SCHECHTER: To form.

5 THE COURT: All right, rephrase.

6 Q. What, if anything, did you tell the defendant to
7 say on that video confession?

8 A. I didn't tell him to say anything.

9 Q. What did you tell him was going to happen when the
10 prosecutors came to the 105?

11 A. I let him know that they were going to, you know,
12 probably read him Miranda and ask him if he wanted to tell
13 his story in the presence of the video camera.

14 Q. Was any other information given to him?

15 A. No.

16 MS. JOHNSON: I have no other questions for
17 Detective Shulman.

18 THE COURT: All right, how is everybody
19 doing?

20 Do you need a break to stretch, use the
21 facilities?

22 I see some heads shaking, some hands going
23 up.

24 Okay, we're going to take our morning break.
25 We'll be back here in ten minutes. Just follow Kenny

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1 out the door. Watch your step.

2 (Jury exits.)

3 (Recess taken in the proceedings.)

4 (Witness resumes the stand.)

5 THE COURT: Just, on the record,

6 Mr. Schechter, this morning my law secretary received a
7 package of what she believes to be approximately 30
8 documents from ACS.

9 She's been -- we've been, actually, both of
10 us, going through them.

11 I'm providing you and Ms. Johnson copies of
12 those items that we think would be relevant to the
13 allegations that are here.

14 The first two pages that I gave you with a
15 staple on them are actually consecutive pages because
16 it continues on from a Page 7 to Page 8. It's
17 essentially what appears to be the interview conducted
18 at the 105th Precinct by CPS.

19 (Shown to counsel.)

20 THE COURT: And then the third page that I
21 provided is -- they're all entitled investigation
22 progress notes.

23 The third page is what I would deem to be a
24 further or another account by the complainant of the
25 allegations.

WS

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1 So I'm providing them to both of you at this
2 point. There's still a number of more pages that we're
3 attempting to go through as quickly as possible.

4 (Jury enters.)

5 THE COURT: Okay, members of the jury, we're
6 ready to continue.

7 Mr. Schechter?

8 MR. SCHECHTER: Shall I begin, your Honor?

9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MR. SCHECHTER:

12 Q. Detective Shulman, you're 37 years of age, is that
13 correct?

14 A. Yes, your Honor -- yes.

15 Q. Thank you very much, but I'm not quite there.

16 Now, I'm going to ask you, before you became a
17 police officer you were a security guard in Maryland?

18 A. Yes.

19 Q. And as a security guard in Maryland did you guard
20 payroll, did you work in a mall?

21 Where did you work?

22 A. I had several different assignments of which would
23 be strip malls, shopping centers and some residential
24 communities.

25 Q. Got it.

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1 And you're a native New Yorker, is that correct?

2 A. That is correct.

3 Q. Now, you've indicated on direct examination you
4 were promoted to detective second grade, correct?

5 A. Correct.

6 Q. And your specific duties, you enhance arrests,
7 isn't that so?

8 MS. JOHNSON: Objection.

9 THE COURT: Yeah, I'll sustain as to form.

10 Q. Did you ever tell the grand jury that you enhance
11 arrests?

12 A. I don't know if I said that or not.

13 Q. Well, do you know what the term enhance arrests
14 means?

15 A. Yes.

16 Q. Hum?

17 A. Yes.

18 Q. Isn't it a fact that you were the detective at the
19 105 Precinct charged with enhancing arrests?

20 Isn't that so?

21 A. Not specifically, no.

22 Q. Is that one of your duties, to enhance arrests?

23 A. It's one of my many duties, yes.

24 Q. And enhancing arrests requires you to obtain
25 confessions, does it not?

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1 A. No, it does not.

2 Q. Now, on the night in question, detective, you were
3 working a -- what tour was that, 4 to 1, sorry?

4 A. 4:27 p.m. on June 23rd to 1 a.m. June 24th.

5 Q. Okay. Now, your tour ended at 1 o'clock, is that
6 correct?

7 A. My scheduled tour.

8 Q. Your scheduled tour ended at 1 o'clock.

9 You were first informed that the complaining
10 witness was at the precinct at 2:30, yes or no?

11 A. Yes.

12 Q. What were you doing from 1 to 2:30 at the precinct
13 if your tour ended at 1 o'clock?

14 A. I was working on other investigations. I don't
15 know specifically what case I was working on.

16 Q. Did you apply for overtime from 1 to 2:30?

17 A. It doesn't work like that.

18 Q. Well, did you stay at the precinct from 1 to 2:30?

19 What investigation were you working on?

20 A. I don't know specifically what I was working on.

21 Q. Now, in the course of your duties you maintain a
22 memo book, is that correct?

23 A. Yes.

24 Q. And in the memo book as part of Police Department
25 protocol you're required to basically outline the important

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1 parts of your tour, would that be fair to say?

2 A. Depends on your assignment as to whether or not
3 that is necessary.

4 MR. SCHECHTER: May I have this, please,
5 marked as Defendant's Exhibit T for identification?

6 THE COURT: Defendant's T.

7 MR. SCHECHTER: T.

8 (Defendant's Exhibit T marked for
9 identification.)

10 Q. Now, officer, you were working on a homicide
11 investigation, weren't you?

12 A. Pardon me?

13 Q. You were working on a homicide investigation that
14 day, weren't you?

15 A. I don't know specifically --

16 Q. Sorry?

17 A. I don't know specifically what I was working on.

18 Q. As a matter of fact, you wrote in your memo
19 book --

20 MS. JOHNSON: Objection.

21 THE COURT: No -- well, just continue the
22 question.

23 Q. You wrote in your memo book that for every hour
24 from 4 through the next day you were working on a homicide
25 investigation, is that true?

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1 MS. JOHNSON: Objection.

2 THE COURT: No, I'll allow that.

3 You can answer that.

4 A. That's not --

5 Q. Yes or no?

6 A. No.

7 Q. May I have that, please?

8 A. I mean --

9 THE COURT: All right, just hand the exhibit
10 back.

11 MR. SCHECHTER: Thank you.

12 (Shown to counsel.)

13 Q. Now, in your memo book you indicate on Monday,
14 June 23rd, '08 your tour was 4:27 through 0100, would that be
15 fair to say?

16 MS. JOHNSON: Objection.

17 THE COURT: Yeah, sustained.

18 Q. Is this a record kept by you in the ordinary
19 course of business of the New York City Police Department?

20 A. Yes.

21 Q. And is it in the ordinary course of business of
22 the New York City Police Department to maintain and keep
23 this record?

24 A. Yes.

25 THE COURT: Mr. Schechter --

Shulman - People - cross

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1 Q. Is it your duty --

2 THE COURT: Mr. Schechter, could we have some
3 testimony as to what it is you have in your hand,
4 because I don't think it's been established yet?

5 MR. SCHECHTER: Oh, I'm sorry, Judge.
6 Detective Lennard Shulman's memo book for date opened
7 January 4, '06.

8 THE COURT: Detective, is Defendant's T for
9 identification, a copy -- photocopy of a page or pages
10 of your memo book?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: All right, go ahead.

13 Q. And were you under a duty as part of your duties
14 in the Police Department to maintain this memo book -- oh,
15 you have the original with you?

16 THE COURT: Yes?

17 THE WITNESS: Yes, your Honor.

18 Q. And --

19 THE COURT: Well, yes, that's your original
20 memo book.

21 I think you got a question pending.

22 MR. SCHECHTER: Yes.

23 Q. Are the entries in this memo book close in time to
24 when the events they portrayed occurred?

25 A. Again, it depends on what your assignment is in

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1 the Police Department as to what gets documented in your
2 memo book and what doesn't.

3 MR. SCHECHTER: Not responsive to my
4 question, your Honor.

5 THE COURT: No, I think it is.

6 Q. Do the events portrayed in this memo book
7 accurately reflect the time when they are entered, yes or
8 no?

9 A. Some entries do, some entries may have some sort
10 of lag.

11 Q. As a general rule, this memo book, the entries
12 that you put in here are right approximately when the events
13 occurred, is that correct?

14 A. As a generalization, yes.

15 Q. And you were the only one to make these entries in
16 this memo book except when your sergeant signs off on it,
17 correct?

18 A. Correct.

19 MR. SCHECHTER: I offer this, your Honor, in
20 evidence as Defense Exhibit T as a business record.

21 THE COURT: People?

22 MS. JOHNSON: We object to the foundation and
23 other grounds.

24 THE COURT: Yeah, let me -- Mr. Schechter,
25 let me see you with the DA?

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1 COURT OFFICER: Step down, please?

2 (Witness steps down.)

3 (Sidebar conference held as follows:)

4 MR. SCHECHTER: He answered all the right
5 questions and it was a predicate -- the foundation was
6 properly laid, your Honor. It's a business record.

7 (Shown to Court.)

8 THE COURT: It wasn't exactly that.

9 People?

10 MS. JOHNSON: Judge, in fact, it's not kept
11 at -- or he said it's not kept at or about and it
12 doesn't contain all of the actions that he took and it
13 is not a complete record of what he did during the
14 course of the day, exactly what is required for a
15 business record to come into evidence.

16 THE COURT: All the actions -- that's not one
17 of the criteria for the business record exception.

18 MS. JOHNSON: My point being that he
19 indicated it was not a complete and accurate copy of
20 the events because there are items that are not there.

21 MR. SCHECHTER: That does not affect
22 admissibility.

23 THE COURT: I think he said that these times,
24 as a general rule, are generally entered in there,
25 these times and events, at or about the time it takes

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1 place and that he has an obligation to do it.

2 MR. SCHECHTER: Doesn't affect admissibility.

3 THE COURT: It's a little --

4 MS. JOHNSON: I would also ask what's the
5 offer of proof of the probative value?

6 MR. SCHECHTER: None of your business.

7 MS. JOHNSON: Excuse me?

8 MR. SCHECHTER: None of your business.

9 THE COURT: The problem, Ms. Johnson, is that
10 as a business record exception there is an element of
11 relevance, but not as much as an offer that is not a
12 business record exception.

13 Over objection, I'm going to allow it as T in
14 evidence.

15 MS. JOHNSON: Our objection is based on
16 foundation as well as the contents of being hearsay.

17 THE COURT: Yes.

18 (Sidebar conference concludes.)

19 THE COURT: Members of the jury,
20 Defendant's T will be received in evidence over
21 objection.

22 (Defendant's Exhibit T received in evidence.)

23 MR. SCHECHTER: May I have the document,
24 please?

25 (Shown to counsel.)

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1 Q. Now, officer, you have the original of this
2 document, do you not, in your possession?

3 A. Yes.

4 Q. It's right before you, correct?

5 A. Yes.

6 Q. Now, please turn to the entries for June 23
7 through June 25.

8 You have them before you?

9 A. Yes.

10 Q. Now, officer, on June 23 you were working a
11 4:27 p.m. to 1 a.m. tour, would that be fair to say?

12 A. Yes.

13 Q. And you noted in your memo book assisting homicide
14 investigation right under that notation, isn't that true?

15 Yes or no?

16 A. No.

17 Q. What does, A-S-S-H-O-M-I-N-V, mean?

18 A. It's my way of writing that my assignment is
19 homicide investigator every day.

20 Q. Well, you've indicated to the jury that you do
21 more than homicide investigations, you're called upon by the
22 precinct to have many other responsibilities, including
23 investigating whatever comes into the precinct?

24 Didn't you tell the jury that on direct
25 examination?

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1 A. I don't know if that was my testimony
2 specifically, but I do many things.

3 Q. So you don't just do a homicide investigation, you
4 do many things, correct?

5 A. I do many things, yes. I'm --

6 Q. And then 0800, that's 8 in the morning, that's the
7 next entry on -- that's the first entry on the 23rd, would
8 that be fair to say?

9 Is that the sergeant's signature?

10 Please read.

11 A. Ask me again what point you're pointing to,
12 please?

13 Q. Yes, 0800?

14 A. Okay.

15 Q. Whose signature is that?

16 A. My signature.

17 Q. Okay, now, look at Tuesday, June 24th.

18 You were working an 8 a.m. to 4:33 p.m. tour, is
19 that correct?

20 A. Correct.

21 Q. And, once again, you have right under that
22 A-S-S-H-O-M-I-N-V?

23 That's A-S-S-H-O-M-I-N-V, correct?

24 A. Correct.

25 Q. And that's the 24th, is that correct?

WS

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1 A. Correct.

2 Q. The next entry is 2133 and that's your signature
3 again, is that correct?

4 A. Yes, it is.

5 Q. Anywhere within your memo book from between
6 June 23 and June 24 did you have any notation whatsoever
7 about what you did with Mr. Gopaul, yes or no, on your memo
8 book?

9 A. I have DD5s that I prepared in that time frame.

10 MR. SCHECHTER: Objection, not responsive.

11 THE COURT: If you can't answer yes or no,
12 just tell the attorney you can't answer yes or no.

13 Can you answer that question?

14 THE WITNESS: I can't answer that yes or no
15 like that, your Honor.

16 THE COURT: Okay.

17 Q. You've read the entries between June 23 and
18 June 24, they're right in front of you, correct?

19 A. Correct.

20 Q. There are no entries regarding Harold Gopaul in
21 your memo book, are there?

22 A. In my memo book, no.

23 Q. Officer --

24 THE COURT: I think it's detective.

25 Q. I'm sorry, detective.

Shulman - People - cross

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1 Detective, at 2:30 you were informed that the
2 complainant was in the office -- was in the police precinct,
3 correct?

4 A. Correct.

5 Q. Now, incidentally, what is the difference between
6 precinct and squad?

7 A. Well, the precinct is, one, a physical structure
8 and is an indicative title of a patrol precinct.

9 Q. Right?

10 A. And a detective squad is assigned to the detective
11 bureau that could be housed anywhere.

12 Q. So that when a detective is asked, "What's your
13 command," he would, in your case, say the 105 squad, would
14 that be fair to say?

15 A. The 105th detective squad, yes.

16 Q. Average person wouldn't know 105 squad, would that
17 be fair to say?

18 MS. JOHNSON: Objection.

19 THE COURT: Yeah, sustained.

20 Q. Now, taking the chronology of where you were,
21 detective, at 2:30 you were informed that Sana Awan was in
22 the precinct, yes or no?

23 A. Yes.

24 Q. And you went up to speak to Sana Awan, is that
25 correct?

WS

Shulman - People - cross

694

1 A. No.

2 Q. What -- where did you go?

3 A. I remained in my office and at some point in time
4 Ms. Awan was brought up to my office to be interviewed.

5 Q. Do you remember what time that was?

6 A. I believe it was approximately 3:10 or 3:20 in the
7 morning.

8 Q. And as you were interviewing Sana Awan at 3:20 in
9 the morning you were informed that Mr. Gopaul was in the
10 precinct, is that correct?

11 A. Not at 3:20 in the morning I wasn't.

12 Q. When were you informed that Harold Gopaul was in
13 the precinct?

14 A. Somewhere between 4:45 a.m. and 5 a.m.

15 Q. So, therefore, you were talking to Sana Awan from
16 approximately, would it be, 2:30 or 3 a.m. -- I'm sorry, I
17 didn't remember when you first spoke to her?

18 A. To whom?

19 Q. Sana Awan?

20 A. I believe it was about 3:10 or 20 in the morning.

21 Q. So from 3:10 until quarter to 5 in the morning,
22 more or less, you were speaking to Sana Awan, would that be
23 fair to say?

24 A. On and off.

25 Q. Well, what were you doing in the off times?

Shulman - People - cross

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1 A. Looking into other things, possibly taking a
2 minute to collect myself.

3 Q. And Sana Awan was in the room with you, correct?

4 A. Part of the time.

5 Q. Now, you were informed by Sergeant O'Hagan, as you
6 testified on direct examination, that Mr. -- that he had
7 assisted in the apprehension of Mr. Gopaul, correct?

8 A. I don't know if that's what my testimony was on
9 direct, but Sergeant O'Hagan did indicate to me that he
10 and -- that Mr. Gopaul was taken into custody and that he
11 was there when it occurred.

12 Q. Did he tell you that he was -- that he assisted in
13 the apprehension of Mr. Gopaul?

14 A. I don't know if those were his exact words or not.

15 Q. Did he tell you, more or less, that he recognized
16 Mr. Gopaul's name and that he assisted in the apprehension
17 of Mr. Gopaul?

18 A. Again, I don't know if he said assisted, but he
19 did indicate that he had recognized Mr. Gopaul's name and an
20 Ecolab uniform he was wearing when he came into the
21 precinct.

22 MR. SCHECHTER: I ask that this be marked as
23 Defendant's U, please, for identification.

24 THE COURT: Defendant's U.

25

Shulman - People - cross

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1 (Defendant's Exhibit U marked for
2 identification.)

3 (Shown to witness.)

4 Q. Now, do you recognize that document, yes or no?

5 THE WITNESS: I can't answer that
6 specifically just with a yes or no.

7 THE COURT: You can't answer yes or no?

8 THE WITNESS: I can answer yes or no with
9 something added to it.

10 THE COURT: Just tell Mr. Schechter you can't
11 answer yes or no.

12 A. I cannot answer yes or no like that.

13 Q. Are you telling this jury you cannot answer yes or
14 no whether you recognize this document?

15 A. That's not what I'm saying.

16 Q. Do you recognize that document, yes or no?

17 THE COURT: Do you recognize the document?

18 THE WITNESS: I recognize it as appearing to
19 be a copy of a partial document.

20 Q. Now, looking at the line that I put yellow on,
21 does that refresh your recollection that Detective O'Hagan
22 (sic) told you that he assisted in the apprehension of
23 Mr. Gopaul?

24 MS. JOHNSON: Objection.

25 THE COURT: All right, the objection is

Shulman - People - cross

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1 overruled.

2 That's a yes or no.

3 Detective, would you just take a look at that
4 document?

5 After you look at it if you can answer
6 Mr. Schechter's question?

7 A. Yes.

8 Q. Okay.

9 MR. SCHECHTER: May I have that back, please?

10 (Shown to counsel.)

11 Q. Detective O'Hagan (sic), in fact --

12 A. Sergeant O'Hagan.

13 Q. I'm sorry, Sergeant O'Hagan, in fact, assisted in
14 the apprehension of Mr. Gopaul, correct, yes or no?

15 A. I wasn't present, so I can only go by what I
16 was --

17 Q. Told?

18 A. Yes.

19 Q. By him?

20 A. Yes.

21 Q. Mr. Gopaul, to the best of your knowledge,
22 surrendered to the precinct -- didn't surrender, came to the
23 precinct voluntarily, is that correct?

24 A. To my knowledge.

25 Q. And how tall and how much does he weigh, if you

Shulman - People - cross

698

1 know, if you can estimate?

2 A. I don't know specifically.

3 MS. JOHNSON: What date?

4 Objection.

5 THE COURT: Assume --

6 Q. On June 24, if you recall?

7 A. I don't know specifically.

8 Q. Now, you knew at the time that your first contact
9 was made with Mr. Gopaul that he was already under arrest,
10 isn't that so?

11 A. Yes.

12 Q. And he had been arrested by one or more other
13 police officers, is that correct?

14 A. Yes.

15 Q. How many police officers placed Mr. Gopaul under
16 arrest?

17 A. I don't know.

18 Q. Now, he was in the precinct itself when he was
19 placed under arrest?

20 A. I have to say I don't know.

21 Q. To the best -- based upon your investigation he
22 was in the precinct when he was placed under arrest, is that
23 correct?

24 MS. JOHNSON: Objection.

25 THE COURT: No, I'll allow it.

Shulman - People - cross

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1 If you know.

2 A. I believe, but I wasn't there.

3 Q. Now, he was never charged with resisting arrest,
4 was he?

5 A. I don't believe so, no.

6 Q. Matter of fact, he was unhandcuffed, according to
7 you, in the room, right?

8 A. Correct.

9 Q. So there's no reason to assist in the apprehension
10 of Mr. Gopaul, was there?

11 A. I can't answer that.

12 Q. Do you know which officer placed Mr. Gopaul
13 physically under arrest?

14 A. I don't.

15 Q. But some other officer did, correct?

16 A. Somebody did. I don't know specifically who.

17 Q. Why wasn't that police officer placed --
18 withdrawn.

19 Why wasn't that police officer credited with the
20 arrest of Mr. Gopaul?

21 A. I don't know.

22 Q. Police Officer Alfaro was taken off of her radio
23 motor patrol and told that she's going to take credit for
24 the arrest, correct?

25 A. Yes.

WS

Shulman - People - cross

700

1 Q. Why?

2 A. I don't know. That's a formal course of business
3 with the Police Department.

4 Q. Isn't it to shield the officers that did place him
5 under arrest from charges that they assaulted him and
6 manhandled him when he was placed under arrest?

7 Isn't that the reason?

8 MS. JOHNSON: Objection.

9 THE COURT: No, I'll allow it.

10 You can answer that.

11 A. I don't believe so. It's a normal course of
12 business within the Police Department for people to be
13 assigned arrests that they weren't necessarily an
14 apprehending officer on.

15 Q. So it's in the normal course of business of the
16 Police Department to allow a police officer to get 16 hours
17 of overtime to put their name on the sheet as the arresting
18 officer rather than have an officer who is already on patrol
19 to process the arrest, is that what you're telling this
20 jury?

21 MS. JOHNSON: Objection.

22 THE COURT: Yeah, sustained.

23 Q. Now, when you first saw Mr. Gopaul he was in the
24 room, you're saying, the interrogation room?

25 A. He was in an interview room.

WS

Shulman - People - cross

701

1 Q. Is that room commonly referred to in the
2 105 Precinct as the box?

3 A. I don't know that I would say commonly, but I've
4 heard it called the box.

5 MR. SCHECHTER: I ask that --

6 A. Not just that room, but interview rooms --

7 Q. I don't believe there's a question in front of you
8 now, officer.

9 THE COURT: All right, do you want to mark
10 something, Mr. Schechter?

11 MR. SCHECHTER: Yes, Judge, Exhibits --

12 THE COURT: V, I think.

13 MR. SCHECHTER: V, W, X, Y.

14 (Defendant's Exhibits V through Y marked for
15 identification.)

16 (Shown to witness.)

17 Q. Now, please take a look at those photographs,
18 officer.

19 Now, Photograph V, does that fairly and accurately
20 portray the outside of the 105 Precinct on June 24th, 2008?

21 A. The front entranceway, absent of foliage, yes.

22 MR. SCHECHTER: I offer that as
23 Defendant's Exhibit V in evidence, please?

24 THE COURT: All right.

25 MS. JOHNSON: Can I see it, Judge, or do we

ws

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1 want to go through all of them first?

2 THE COURT: Let me ask you, Mr. Schechter,
3 are you going to be offering all of these?

4 MR. SCHECHTER: I will.

5 THE COURT: Would you show Ms. Johnson all of
6 them, see if she has any objection to them?

7 (Shown to counsel.)

8 MS. JOHNSON: Your Honor, as long as these
9 are fair and accurate pictures of what is depicted in
10 the photograph as it looked on June 24th, 2008, if that
11 testimony is elicited I have no objection.

12 THE COURT: All right, do you want to ask
13 those questions, then?

14 MR. SCHECHTER: She asked them for me.

15 Q. Are they fair and accurate representations of the
16 box on June 24th, 2008?

17 (Shown to witness.)

18 THE COURT: Just, if you would, detective, go
19 through the remaining few pictures, just indicate what
20 exhibit letter they are and just tell us what they
21 depict and whether or not they fairly and accurately
22 depict those areas, I'm assuming, in the 105th Precinct
23 on or about June 24th, 2008.

24 A. In regards to Exhibit, I believe it's, W, the door
25 itself is indicative of what it probably would have looked

WS

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1 like on that day, although there's some signage on the door.

2 THE WITNESS: I don't know if it was or
3 wasn't on the door on June 24th, your Honor.

4 THE COURT: Other than that, it fairly and
5 accurately depicts that area in the precinct?

6 THE WITNESS: Yeah, I would say so.

7 THE COURT: X?

8 THE WITNESS: And, again, I don't know if
9 those are the specific chairs that are in the room, but
10 the table and the general space or that part of the
11 space that's shown in the photograph would be fairly
12 accurate.

13 And --

14 MS. JOHNSON: Your Honor, could we just have
15 the microphone put on?

16 THE COURT: It is on.

17 MS. JOHNSON: Sorry.

18 THE COURT: And the last, Y?

19 THE WITNESS: Y, again, for the portion of
20 the room that it shows, I would believe it's probably
21 fairly close.

22 THE COURT: All right, do you have any
23 objection, People?

24 MS. JOHNSON: No.

25 THE COURT: All right, so V through Y will be

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704

1 received in evidence.

2 MR. SCHECHTER: Thank you.

3 THE COURT: Just let us mark it.

4 MR. SCHECHTER: I would like them passed to
5 the jury, please.

6 THE COURT: All right, we'll do that and then
7 we're going to break for lunch. After Wendy marks it
8 just give them to the jury.

9 MR. SCHECHTER: Can I ask a question while
10 she's doing that?

11 THE COURT: No.

12 (Defendant's Exhibits V through Y received in
13 evidence.)

14 THE COURT: Do you have a question before it
15 goes to the jury?

16 MR. SCHECHTER: Yes.

17 THE COURT: Please, Mr. Schechter.

18 Q. What does the word complainant mean?

19 A. Someone who is offering up they're --

20 Q. A victim?

21 A. Victim or some sort of reporter of a crime.

22 Q. Now, that room -- you're at the 105th Precinct
23 every day?

24 That's your house where you go every day for the
25 last nine years?

WS

Shulman - People - cross

705

1 A. Seven years.

2 Q. Seven years.

3 So you're familiar with the precinct and the parts
4 of the precinct, is that correct?

5 A. Some parts.

6 Q. Now, you interviewed -- you indicated that the
7 video picture was taken in a much larger room in another
8 part of the precinct, correct?

9 A. Slightly larger.

10 Q. Slightly larger, okay.

11 Now, he's not a complainant, is he?

12 I'm referring to Mr. Gopaul. He was not a
13 complainant, correct?

14 A. No.

15 Q. That room is for interviews of complainants, isn't
16 it?

17 A. Not always.

18 MS. JOHNSON: Objection.

19 THE COURT: Yeah, sustained.

20 Q. Now, officer, on direct testimony you said that
21 the room was eight or nine by ten, do you recall that?

22 A. I believe --

23 Q. You remember that testimony?

24 A. I believe I was estimating at the time, but, yes.

25 Q. Right. Now, the rooms dimensions haven't changed,

Shulman - People - cross

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1 have they?

2 A. Pardon me?

3 Q. The dimensions of the rooms haven't changed?

4 A. No.

5 Q. They're pretty much what they were, right --

6 A. Yes.

7 Q. -- on June 24th?

8 And you recall testifying at the hearing on

9 April 30th, 2009?

10 You remember you told the Judge on that date that
11 the room was approximately ten by eight, not ten by nine?

12 Do you recall that?

13 A. I don't know what my specific measurements were,
14 but ten by eight or ten by nine or nine by ten, I think, are
15 the same, as far as speculative sizes go.

16 Q. Well, would you like your recollection refreshed
17 whether you told the Judge it was eight by ten?

18 In other words, you minimized the size of the room
19 to the Judge -- to the jury, but not to the Judge?

20 MS. JOHNSON: Objection.

21 THE COURT: Yeah, sustained.

22 MR. SCHECHTER: Withdrawn.

23 Q. Now --

24 THE COURT: All right, Mr. Schechter, you're
25 going to go on to a different area?

WS

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1 MR. SCHECHTER: I'm sorry?

2 THE COURT: You're going on to a different
3 area?

4 MR. SCHECHTER: I shall, but in the meantime
5 I suppose we could have the jury look at them.

6 THE COURT: So let's have the jury look at
7 these and then we can break for lunch.

8 MR. SCHECHTER: Thank you.

9 (Defendant's Exhibits V through Y published
10 to the jury.)

11 COURT OFFICER: Okay, Judge.

12 THE COURT: All right, members of the jury,
13 we're going to break at this time for lunch. We're
14 going to pick it up at 2 o'clock.

15 Please remember my admonitions.

16 Please do not discuss the case amongst
17 yourselves or with anybody else.

18 Please don't form any opinions about the
19 case. Please keep an open mind.

20 Please don't view or visit or access any
21 means to research this case or view any -- view or
22 visit any of the areas described.

23 Have a good lunch. We'll see you back at 2.

24 (Jury exits.)

25 THE COURT: Okay, detective, you can step

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1 outside. See you at 2 o'clock.

2 (Witness steps down.)

3 THE COURT: All right, we'll see everybody
4 back at 2 o'clock.

5 (The luncheon recess was taken at this time.)

6 * * * * *

7 A F T E R N O O N S E S S I O N

8 (Witness resumes the stand.)

9 THE COURT: Just give me an idea of what you
10 want to talk about because I don't want them to stand
11 out there.

12 MR. SCHECHTER: I just want to make my offer
13 regarding the videotapes that I made before I had
14 counsel's opening statement.

15 I wish to make reference to it with respect
16 to my application.

17 Now, Page 6 --

18 THE COURT: Let me do this -- are they
19 outside?

20 MR. SCHECHTER: It's pretty short.

21 COURT OFFICER: One is missing, Number 7.

22 MR. SCHECHTER: Counsel says, firstly, on
23 Page 5, she says, "14-year-old Sana couldn't fight him
24 off and the evidence will show that fear remained with
25 her, that fear that even as she fought, said no and

WS

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1 pushed and couldn't resist, that fear remained in her
2 mind."

3 Counsel then states on Page 7, "As the
4 calendar days went, the months went, the years went,
5 that fear that he instilled in her when she was just 14
6 years old remained with her and crossed county lines
7 into Nassau County and she never forgot that she was
8 still afraid because she knew when she tried to fight
9 him she wouldn't win."

10 That was in her opening statement, Judge, so
11 I respectfully --

12 THE COURT: It's not evidence, so -- but what
13 I'll do is I'll -- I don't want to truncate it, if you
14 will. I'll take it up when the People rest and then we
15 can renew it.

16 Other than that, we're ready.

17 Do you have Detective Moran here?

18 MS. JOHNSON: I told him to come outside at
19 2:30.

20 (Pause in the proceedings.)

21 (Jury enters.)

22 THE COURT: All right, members of the jury,
23 we're ready to continue with cross-examination.

24 Mr. Schechter?
25

Shulman - People - cross

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1 CROSS-EXAMINATION CONT'D

2 BY MR. SCHECHTER:

3 Q. Detective Matth -- Detective Shulman, do you know
4 who Detective Matthews is?

5 A. Yes.

6 Q. Who is he?

7 A. He's the detective assigned to the Detective
8 Borough of Queens.

9 Q. And is he assigned to your precinct?

10 A. No, he's assigned to the Detective Borough of
11 Queens.

12 Q. Now, let me ask you this, when you first spoke to
13 Sana Awan she told you that this alleged abuse occurred at
14 three or 400 Community Drive, is that correct?

15 A. At some point in time in my conversation with her
16 she indicated that there was an incident at 400 Community
17 Drive.

18 Q. And that was before you spoke to Mr. Gopaul,
19 correct?

20 A. No.

21 Q. It was after you spoke to Mr. Gopaul?

22 A. Yes.

23 Q. And when did you have that conversation with her?

24 A. Ms. Awan had been sent to the hospital to have a
25 checkup done to make sure she was okay. She was taken in an

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1 ambulance and upon her return from the hospital she
2 indicated to me that while she was on the way to the
3 hospital she saw the building and that the address was
4 400 Community Drive.

5 Q. She told you that on her own?

6 A. Yes.

7 Q. Now, how tall are you?

8 A. I'm about five ten.

9 Q. How much do you weigh?

10 A. About 250 or so, 260.

11 Q. Do you know how tall Harold Gopaul was and how
12 much he weighed on June 24th, 2008?

13 A. Not exactly.

14 MR. SCHECHTER: With the permission of the
15 Court, your Honor, I would like the jury to see the
16 first part of the video when they flash on Mr. Gopaul.

17 THE COURT: Yes.

18 Ms. Johnson?

19 MS. JOHNSON: If I can figure out how to
20 change the wires, of course.

21 (Pause in the proceedings.)

22 THE COURT: Do you want the volume,
23 Mr. Schechter?

24 MR. SCHECHTER: No.

25 MS. JOHNSON: I'm going to rewind it to the

Shulman - People - cross

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1 beginning.

2 MR. SCHECHTER: I don't want the volume. I
3 just want the part where it focuses in on Mr. Gopaul.

4 THE COURT: In the beginning?

5 MR. SCHECHTER: Yes.

6 (Pause in the proceedings.)

7 MR. SCHECHTER: We don't need the volume. I
8 just want the picture.

9 MS. JOHNSON: Tell me where you want it.

10 MR. SCHECHTER: Stop -- no, not yet.

11 (Pause in the proceedings.)

12 MR. SCHECHTER: Now stop.

13 (People's Exhibit 1 published at this time.)

14 Q. Detective Shulman --

15 MR. SCHECHTER: With the Court's permission,
16 could Detective Shulman get off the witness stand?

17 THE COURT: Yeah, just watch your step as you
18 step over.

19 MS. JOHNSON: Do you want me to stay here?

20 THE COURT: If you would.

21 MS. JOHNSON: I don't know if everybody can
22 see.

23 THE COURT: Do you want the detective to
24 point out something?

25 MR. SCHECHTER: No, I'll point it out.

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1 Q. Detective Shulman, you'll notice Mr. Gopaul's
2 collar and you'll notice the sides of the collar are one
3 side all the way to the left and the other side all the way
4 to the right.

5 Did you grab Mr. Gopaul's collar, both hands, grab
6 forward and shove him into the wall and bring him back to
7 you?

8 A. Absolutely not.

9 Q. Could you please explain to the jury how the
10 collar became that stretched out?

11 A. I can't account for Mr. Gopaul's clothing. Maybe
12 he unbuttoned his shirt, I don't know.

13 Q. Was he that way when he came into the room?

14 A. He's sitting in a chair looking like a normal
15 person with a shirt on.

16 THE COURT: Mr. Schechter, you want him to
17 look at that anymore?

18 MR. SCHECHTER: Yes, yes, I want him to look
19 at that.

20 Q. Was his shirt like that when he came into the
21 room, Detective Shulman?

22 A. I don't know if his shirt was buttoned or
23 unbuttoned.

24 Q. Well, you're a trained police officer, are you
25 not?

Shulman - People - cross

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1 A. Well, like any other human being I have a
2 recollection.

3 Q. Are you a trained police officer, yes or no?

4 A. Trained in what?

5 Q. Trained in making observations?

6 A. To some degree, yes.

7 Q. To some degree?

8 Well, you're a detective now for over seven years
9 or nine years, right?

10 A. Yes.

11 Q. And you didn't get to be a detective because
12 you're not an observant police officer, is that correct?

13 A. I would think not.

14 Q. Can you tell this jury whether his collar looked
15 like that when he first -- when you first came into the
16 room?

17 A. And, again, I don't know if his collar was opened
18 or not opened when I first came into the room and spoke to
19 him.

20 THE COURT: Mr. Schechter, in terms -- when
21 you say into the room, are you talking about --

22 MR. SCHECHTER: I'm talking into the
23 interrogation room, not this room.

24 THE COURT: When the detective initially sees
25 him?

Shulman - People - cross

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1 MR. SCHECHTER: When the detective initially
2 saw him, yes.

3 Q. When you first saw him was his collar like that?

4 A. Again, when I first walked into the interview room
5 to speak to Mr. Gopaul I don't know if his collar was open
6 or not.

7 Q. Now, are you familiar with the enhanced
8 interrogation techniques that the United States Army
9 indulges in?

10 Are you familiar with that particular skill that
11 the U.S. Army trains --

12 MS. JOHNSON: Objection.

13 THE COURT: Yeah, sustained.

14 Q. You know that it's called enhanced interrogation,
15 do you not?

16 MS. JOHNSON: Objection.

17 THE COURT: Yeah, sustained.

18 Q. Are you familiar with the Reid style of
19 interrogation, R-e-i-d?

20 A. No, I'm not.

21 Q. Okay.

22 MR. SCHECHTER: Thank you. Please close that
23 and I ask --

24 Q. You can go back to the stand.

25 THE COURT: You can shut that off,

Proceedings

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1 Ms. Johnson.

2 (Witness resumes the stand.)

3 MR. SCHECHTER: I have no more questions of
4 the detective, your Honor.

5 THE COURT: Okay.

6 Ms. Johnson, any redirect?

7 MS. JOHNSON: No, your Honor.

8 THE COURT: All right, detective, thank you
9 very much. You can step down. Watch your step as you
10 step off.

11 THE WITNESS: Thank you, your Honor.

12 (Witness excused.)

13 MS. JOHNSON: Can I step out for a second?

14 THE COURT: Yes.

15 MS. JOHNSON: Okay.

16 (Pause in the proceedings.)

17 THE COURT: Is he down the hall?

18 MS. JOHNSON: I didn't see him.

19 COURT OFFICER: 2:30 you told him.

20 THE COURT: He's not there now?

21 COURT OFFICER: No.

22 THE COURT: Members of the jury, our next
23 witness is expected to arrive at 2:30, so by our clock,
24 it's a little fast, but it appears that we're close to
25 it, but rather than having you sit here and everybody

Proceedings

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1 looking at each other, why don't you take an unexpected
2 break, if you will, and I'll have you back here as soon
3 as this witness is here. I apologize. Figure you got
4 ten minutes.

5 (Jury exits.)

6 MR. SCHECHTER: Your Honor, I understand
7 Detective Shulman was just speaking to one of the
8 jurors.

9 THE COURT: Look it, I didn't see anybody.

10 MR. SCHECHTER: My client observed it. He
11 just told me right out there as the jurors were filing
12 out Detective Shulman was either nodding or
13 communicating to a juror.

14 I would like Detective Shulman brought back
15 in, please.

16 THE COURT: Is he out there, please?

17 THE CLERK: Yes.

18 MS. JOHNSON: I think he was talking to
19 Detective Moran.

20 (Witness enters.)

21 THE COURT: Detective, if you could just take
22 a seat?

23 THE WITNESS: Over here?

24 THE COURT: Yeah, back on the stand.

25 (Witness resumes the stand.)

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1 THE COURT: Detective, as you were, I
2 guess -- you were waiting outside after you just
3 finished testifying?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Did you have any discussion with
6 any jurors as they entered or left the courtroom?

7 THE WITNESS: No, your Honor.

8 MR. SCHECHTER: Did any juror nod to him or
9 in any way make contact and make any gestures
10 whatsoever?

11 Or did you do it to him?

12 THE COURT: No, you're not going to ask the
13 questions, Mr. Schechter.

14 MR. SCHECHTER: I'm sorry.

15 THE COURT: Was there any communication,
16 verbal or nonverbal, between you and a juror?

17 THE WITNESS: No.

18 THE COURT: All right, thank you very much.
19 Step down.

20 (Witness excused.)

21 THE COURT: All right.

22 MS. JOHNSON: I'm going to call and see if
23 he's --

24 THE COURT: Hopefully --

25 MS. JOHNSON: He's always on time.

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1 THE COURT: Don't go too far because I want
2 to discuss, while we have some free time, this issue
3 with regard to these videos.

4 (Pause in the proceedings.)

5 THE COURT: While we have a few moments I
6 would like to pick up, Mr. Schechter, what you were
7 raising before the jury came up and that was you're
8 renewing, which I said I would allow to you do from
9 yesterday, the issue with regard to certain DVDs or --
10 that you had in which you claim certain events were
11 captured by way of DVD videography regarding certain
12 family functions between your client and the
13 complainant.

14 Is there something in the record that you
15 also want to refer to other than the opening statement
16 that you mentioned a moment ago?

17 MR. SCHECHTER: No, your Honor. I believe it
18 was in the opening statement.

19 Let me have one moment, however.

20 (Pause in the proceedings.)

21 MR. SCHECHTER: Counsel asks on Page 58:

22 "Question: And when for the first time did
23 you see that massager?

24 "Answer: The beginning of May.

25 "Question: Did you see it before the

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1 beginning of May?

2 "Answer: Yes.

3 "Question: When before the beginning of May
4 did you see that massager?

5 "Answer: I'm not sure of an exact date, but
6 it was in the car before.

7 "Question: Would it be 2006, 2007, 2008?

8 "Answer: I'm not sure."

9 If I can go on --

10 THE COURT: That's the massager she says was
11 not used against her, if I recall.

12 MR. SCHECHTER: Yes.

13 Question Page 51:

14 "Question: Was there anything else that you
15 were afraid of back when you were 14 years old in the
16 bathroom?

17 "MR. SCHECHTER: Objection to form.

18 "THE COURT: No, I'll allow it overruled.

19 "Question: What else were you scared of?

20 "Answer: I was scared that he would hurt me.

21 "Question: And what is it that you were
22 afraid he would do?

23 "Answer: Like, if I fought back I was scared
24 I would get beat."

25 THE COURT: And --

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1 MR. SCHECHTER: Question Page 51:

2 "Question: Did the incident in the bathroom
3 have any impact on your fear in May of 2008?

4 "MR. SCHECHTER: Objection.

5 "THE COURT: Sustained. Rephrase.

6 "Question: What impact did the incident in
7 the bathroom have you on you, if any, in 2008?

8 "MR. SCHECHTER: Objection.

9 "THE COURT: Overruled.

10 "MR. SCHECHTER: Exception.

11 "THE COURT: Yes.

12 "Question: You can answer.

13 "Answer: Can you rephrase it?

14 "Question: Sure. In May of 2008 did you
15 remember what happened in the bathroom?

16 "MR. SCHECHTER: Objection.

17 "THE COURT: Yeah, overruled.

18 "Answer: Yes.

19 MR. SCHECHTER: Exception, Judge.

20 "THE COURT: Yes."

21 Page 53 -- well, I have to go back to
22 Page 52, I'm sorry, because it refers back to 52:

23 "Question: And what impact did that memory
24 have on you in May of 2008?

25 "Answer: I knew what he was capable of,

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1 so --

2 "MR. SCHECHTER: Objection.

3 "THE COURT: Yeah, sustained. The answer is
4 stricken.

5 "Question: Are you able to answer that
6 question --

7 "MR. SCHECHTER: Objection.

8 "Question: -- in a different way?

9 "THE COURT: Overruled."

10 Page 53:

11 "Question: Are you able to answer that
12 question in a different way?

13 "Answer: Yes.

14 "Question: What's your answer?

15 "Answer: Like, remembering what happened in
16 the bathroom, like I knew there was no point in
17 fighting back so I just did what he said, otherwise --

18 "MS. JOHNSON: Your Honor, I'm going to ask
19 this be marked and show it to the witness."

20 This is on Page 53.

21 THE COURT: Right, I have those pages,
22 although it's a different page number than I have.

23 Well, let me just say this.

24 In the first instance, in this Court's view,
25 it's my understanding that you're proffering these

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1 tapes -- and, by the way, they depict events, I think
2 you indicated yesterday, in either late 2007 or the --
3 up to March of 2008?

4 MR. SCHECHTER: To the best of my knowledge
5 and recollection.

6 THE COURT: So obviously here with regard
7 to -- and, just so it's also clear, I haven't seen the
8 tapes, but from what you've represented it's
9 essentially the complainant in this case, if you will,
10 Ms. Awan herself, taking videos or photos of your
11 client and other people, is that right?

12 MR. SCHECHTER: Yes, mostly my client, but my
13 client sometimes with other people, sometimes of my
14 client exclusively.

15 THE COURT: And there's no videos of the
16 complainant and your client in there, in these videos?

17 MR. SCHECHTER: Well, there is one where
18 she's dancing and I think either my client or
19 Mrs. Gopaul is taking the video. However, I do not
20 believe that that would be one of the ones that I would
21 be offering.

22 THE COURT: All right, so, in essence, it's
23 videos that you believe she's taking of your client.

24 MR. SCHECHTER: Yes -- well, I know she's
25 taking them. She admitted she took videos.

1 THE COURT: I don't even know whether she did
2 or didn't on the witness stand. I don't know how far
3 she got with it.

4 And I take it from your proffer is that this
5 is -- this, you believe, her shooting, if you will, or
6 taking shots with a video camera of your client, in
7 your words, focusing in on him --

8 MR. SCHECHTER: There's more than that, your
9 Honor.

10 Not only is she taking videos of my client,
11 but she's laughing, teasing, prodding, poking, showing
12 that she is very much amused and fond of my client in
13 what she says during the tape in the video pictures.
14 It's obvious that she's keyed into my client in a very
15 favorable way, not being threatened, not being forced,
16 not being under any duress, during the time when she
17 says, "I had this constant memory when this occurred in
18 2004 and this was recurring and always in my mind until
19 2008."

20 Counsel was able to draw that out from her.

21 THE COURT: I have to differ from you as far
22 as what she drew out and what she may be able to argue
23 to the jury.

24 As far as I'm concerned, her testimony
25 regarding the event in '04, the initial event I allowed

1 her to elicit, as far as this Court is concerned deals
2 with an element of force as she described it in which
3 she claimed that she couldn't resist, physically, your
4 client.

5 I know what Ms. Johnson maybe would have
6 liked to elicit, but in terms of the testimony that I
7 have, I'm not sure that that is what was elicited.

8 Essentially, she said -- "What were you
9 scared of," she's asked.

10 MR. SCHECHTER: Page, your Honor?

11 THE COURT: Mine is Page 4, but it says, "I
12 was scared, like, that if my mom came -- " I read this
13 in the record yesterday, "I was scared that if my mom
14 came in and saw him doing anything that I would cause
15 them, you know, the breakup of their family. Like, I
16 was scared I would mess up the family."

17 That's not talking about fear of your client.
18 So that's one answer that came out.

19 She does say that, "I was scared he would
20 hurt me," at the time of the incident based upon her
21 physically being unable to resist him. That's on the
22 following page.

23 MR. SCHECHTER: Hopefully, the record is
24 clear, your Honor.

25 Is 53 the official court page, official page

1 of the transcript, or is 4?

2 THE COURT: Whatever page it is, I'm reading
3 from the transcript that I have. I mean, the
4 pagination may be off, but it's not different than what
5 you have. I certainly trust it.

6 MR. SCHECHTER: I can certainly show this to
7 your Honor if your Honor wishes to read what I read
8 into the record.

9 THE COURT: I'm not saying that you're
10 misrepresenting what's read in the record, but, again,
11 I don't think that the videos in themselves are -- can
12 be characterized as prior inconsistent statements,
13 obviously, number one, because they're not statements
14 of Ms. Awan, so that's clearly not the case.

15 Number two, the time in which these videos
16 are taken are clearly many years after this incident in
17 '04 that she testified to. I quite frankly think she
18 only referred to being scared, one, of not being able
19 to physically resist him at the time and, two, that she
20 was scared of the breakup of her family if she was to
21 reveal this to anybody.

22 So, in terms of a context, a time context,
23 you're saying that these instances refer to a period of
24 time that is not contained in the indictment, is not
25 contained in terms of part of the testimony that was

1 elicited as part of the Molineaux application and I
2 really don't think that it's proper impeachment of this
3 witness. It doesn't -- it's not videos where she's
4 shown to be affectionate, for example, with your client
5 at or about the times of the indictment or at or about
6 the time of the incident in May that are depicted in
7 there.

8 In fact, from what you're telling me,
9 Ms. Awan is not depicted in it at all.

10 MR. SCHECHTER: Ms. Awan is the photographer.

11 THE COURT: I understand that and I'm basing
12 my decision based on your representation. I didn't see
13 it.

14 MR. SCHECHTER: I offered to play it to the
15 Court.

16 THE COURT: I'm taking what you're telling me
17 is accurate. So I don't know if me seeing it
18 necessarily is going to change my ruling. I'm assuming
19 that what you're telling me is accurate and that's what
20 I'm basing my decision on.

21 So for those reasons I don't really think
22 that it would be admissible as some type of either
23 prior inconsistent statement or inconsistent with what
24 she's really testified to.

25 I mean, we have to keep in mind that she said

1 throughout her testimony that when she was in public,
2 which these are videos of her -- not her, but videos of
3 your client with other people around, that her
4 demeanor, her behavior, her interaction with your
5 client and the family -- and her family and others was
6 normal.

7 In other words, there was nothing about it
8 that was any, you know, different than what she said
9 took place between you and your client -- I should say
10 her and your client privately.

11 So, again, I don't think it's inconsistent
12 with what she's testified to either in a statement
13 or -- one, or, two, in terms of showing some type of
14 demeanor that's inconsistent with what she's testified
15 to as to how she behaved during --

16 MR. SCHECHTER: I think your Honor is
17 unintentionally mischaracterizing that statement.

18 I think Ms. Awan said that in public my
19 client was with the family, he was normal, however he
20 conducts himself with the family, not she. She was not
21 referring to how she conducted herself. She was
22 referring to how he conducted himself when he was in
23 public and with the family, not how she did. And I'm
24 entitled to draw whatever inferences that I can draw.

25 Certainly if I -- from these videos -- and,

1 again, I had offered to play them to the Court
2 yesterday, I offer to play them at any time the Court
3 wishes. From these videos it's not just the video of
4 Sana taking pictures of my client, focusing on him,
5 concentrating on him, it's her statements when she's
6 doing it, her laughter, her joyous demeanor, how she's
7 interacting with my client, during the period of time
8 when counsel was able to draw out, as I read into the
9 record, that she was somehow under this cloud of fear
10 from that event in 2004 all the way until 2008. This
11 was -- it's clear and it's unequivocal, those were the
12 words that she used to try to draw out the fear and the
13 reason she tried to do that is because she was afraid
14 that Sana did not every time she was allegedly abused
15 have force used against her so she wanted to try to
16 draw out to the jury, apparently, that she was under
17 this cloud of fright.

18 THE COURT: Let me just kind of assuage your
19 concerns in this sense.

20 The People are not going to be able to argue,
21 based upon what I've seen during the testimony, there's
22 some kind of cloud of fear that went on. I understand
23 what the DA, the Assistant, said in her statement. As
24 far as I'm concerned there hasn't been developed an
25 adequate record to make those assertions in her closing

1 arguments.

2 As far as I'm concerned, her testimony
3 regarding this incident in '04 -- 04, '05, really is --
4 talks about an element of force that was used at that
5 time and the next discussion about her really being in
6 fear of the defendant concerns the times in May and
7 June of '08 which is what this jury is going to be
8 considering in this indictment.

9 MR. SCHECHTER: Your Honor, I respectfully
10 submit that that's like trying to unring a bell. All
11 of this stuff was put before the jury, in her opening
12 statement --

13 THE COURT: Her opening statement is not
14 evidence.

15 MR. SCHECHTER: May I please continue, Judge?

16 THE COURT: Yes.

17 MR. SCHECHTER: In her opening statement
18 followed by the questions I read into the record as an
19 exclamation point.

20 The fact is, she backed it up with the
21 questions to this witness and the questions that the
22 Court permitted the witness to answer do permit a
23 reference back.

24 The fact that the Court might now, sua
25 sponte, limit counsel's summation to that -- to not

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1 include that, as I said, you got 12 jurors here, it's
2 like unringing a bell and my client cannot have been
3 otherwise been prejudiced by the introduction ab initio
4 of that material as I objected to in the beginning.
5 I'm only trying to negate this cloud of fear argument
6 she put before the jury.

7 THE COURT: Again, I seem to say things,
8 Mr. Schechter, and you seem to not be listening to what
9 I'm saying.

10 Cloud of fear is not going to be a word -- if
11 it does get used, if there's an objection, it will be
12 sustained, as far as from '04 to '07 and -- from '04,
13 this incident that was testified to, until the incident
14 that this jury is considering in terms of the
15 indictment.

16 Whether or not you want to elicit these tapes
17 if you feel that it's some part of your defense case,
18 that's a separate issue.

19 And whether or not you want to seek to use
20 them for some other reason, you're not for closed from
21 doing that.

22 But at this point I've made my ruling. You
23 have the reasons for my ruling and at this point I'm
24 not going to modify it at this point.

25 MR. SCHECHTER: Please note my exception.

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1 And, further, I just need to be heard
2 again --

3 THE COURT: Mr. Schechter, I think you've
4 been heard -- you made a record. You've now excepted.
5 I have a jury that's waiting. I told them ten minutes
6 ago they would be here so, please, I don't want to --
7 if it's something that's short, to the point, please.

8 MR. SCHECHTER: It's very short.

9 The only conceivable way that that could come
10 in is for my client to waive his Constitutional right
11 to testify.

12 THE COURT: That's absolutely incorrect and
13 that's a misrepresentation on your part.

14 Okay, let's go.

15 (Brief recess taken in the proceedings.)

16 (Jury enters.)

17 THE COURT: All right, we're ready to
18 proceed.

19 People, your next witness?

20 MS. JOHNSON: Your Honor, the People call
21 detective Edward Moran.

22 E D M O N D M O R A N, a witness called on behalf of the
23 People, having been first duly sworn by the clerk of
24 the Court, was examined and testified under oath as
25 follows:

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1 COURT OFFICER: You could take a state.

2 For the record, state your name, spell your
3 last name, shield number, rank and command.

4 THE WITNESS: Edmond Moran, M-o-r-a-n, Shield
5 Number 827, Nassau County Police Department, special
6 victim's squad.

7 THE COURT: Ms. Johnson?

8 MS. JOHNSON: Thank you.

9 DIRECT EXAMINATION

10 BY MS. JOHNSON:

11 Q. Good afternoon, Detective Moran.

12 A. Good afternoon.

13 Q. How long have you been employed by the Nassau
14 County Police Department?

15 A. About 22-1/2.

16 Q. Can you tell the members of the jury, over those
17 22 years where have you been -- what assignments have you
18 been assigned to?

19 A. The first nine years I was in patrol, in uniform
20 patrol, and then I spent two and a half years as a detective
21 in the 8th Squad and then for the last 11 years I've been in
22 special victim's squad.

23 Q. What types of cases do you handle as a detective
24 assigned to the special victim's squad?

25 A. The special victim's squad, we handle cases of

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1 sexual abuse, rapes and sodomies, victims both male and
2 female of all different ages.

3 Q. Were you in -- a detective assigned to the special
4 victim's squad back in 2008?

5 A. Yes.

6 Q. And were you assigned there back on July 22nd,
7 2008?

8 A. Yes.

9 Q. Did there come a time when you met with a victim?

10 A. Yes.

11 Q. What was her name?

12 A. Anna -- Sana Awan, A-w-a-n.

13 Q. Sana Awan?

14 A. Sana Awan, yes.

15 Q. What was the reason you met with Sana Awan?

16 A. Earlier, a few weeks earlier, I was notified by
17 New York City Police Department that they had --

18 MR. SCHECHTER: Objection.

19 THE COURT: Yeah, just you were notified by
20 New York City Police Department?

21 THE WITNESS: Yes.

22 THE COURT: All right, go ahead.

23 Q. Were you going to be handling a Nassau County case
24 involving Sana Awan?

25 A. Yes.

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1 Q. And were you the detective in Nassau County
2 assigned to that case?

3 A. Yes.

4 Q. Did you have the opportunity to actually interview
5 Sana Awan?

6 A. Yes, I did.

7 Q. When you interviewed Ms. Awan what periods of time
8 were the substance of your interview of her?

9 A. I was investigating incidents that occurred in the
10 month of May and June of 2008.

11 Q. In Nassau County?

12 A. That's correct.

13 Q. When you spoke to Ms. Awan did you advise her what
14 time period you were going to be speaking with her about?

15 A. Yes.

16 Q. When you spoke to Ms. Awan did you advise her --

17 MR. SCHECHTER: Objection to the leading,
18 your Honor.

19 THE COURT: Yeah, sustained.

20 Q. Did you tell Ms. Awan --

21 MR. SCHECHTER: Objection to the form of the
22 question.

23 THE COURT: All right, Mr. Schechter, please,
24 I've said this to both of you, if you'll let each other
25 finish the question before you object?

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1 Would you finish, please?

2 Q. Did you tell Ms. Awan what you were going to be
3 speaking with her about?

4 MR. SCHECHTER: Objection.

5 THE COURT: Yeah, overruled.

6 A. Yes.

7 Q. Did there come a time when you took a statement
8 from her?

9 A. Yes.

10 Q. And was that a verbal or written statement?

11 A. The interview was verbal, of course, and the
12 statement was typed -- written -- the statement was a
13 two-page typed statement.

14 Q. What was the purpose of that?

15 A. To memorialize the interview, our discussion,
16 about what she states has happened to her and she reads it
17 and signs it.

18 Q. Was that, in fact, done in this particular case?

19 A. Yes.

20 Q. And when you say interview, what happens during --
21 what happened during the interview process?

22 A. In any of my cases the person making the
23 allegations would be sitting --

24 MR. SCHECHTER: Objection to what happens in
25 many of his cases, Judge, we're talking about this

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1 case.

2 THE COURT: Could you just tell us what
3 happened in this case?

4 A. What happened in this case, the person making the
5 allegation sits in a room with me and we discuss what
6 happened. I ask questions. They answer questions and we go
7 into detail.

8 Q. In this case did you take notes during your
9 interview with Ms. Awan?

10 A. Yes, I did.

11 Q. What was the purpose of that?

12 A. The immediate interview with her I ask her
13 questions about what happened so we both know what we're
14 talking about and I make an outline and just take notes of
15 what we're talking about prior to the actual typed
16 statement, which is more details.

17 Q. When you say outline what does that mean?

18 A. It's my way of just taking notes during an
19 interview to refresh my memory as to what we're talking
20 about so that there is an order and a sequence and I don't
21 forget things.

22 Q. Are those notes the actual verbatim statement of
23 the complainant?

24 A. Yes, it's -- it's -- we speak and I write it down,
25 yes.

ws

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1 Q. Is it a complete statement?

2 A. No, it's not.

3 MS. JOHNSON: Your Honor, I'm going to ask
4 for what's been marked as Defendant's Exhibit R for
5 identification purposes?

6 THE COURT: Defendant's R?

7 MS. JOHNSON: Yes, I would ask for that.

8 MR. SCHECHTER: I have to find it, Judge.

9 May I have some time?

10 I have to look.

11 THE COURT: Yes.

12 (Pause in the proceedings.)

13 MR. SCHECHTER: I would have gotten it if
14 counsel had informed me in advance. I'm going to need
15 a few minutes to get it, Judge.

16 THE COURT: Let me ask you, Ms. Johnson, do
17 you have a copy yourself of what's previously been
18 marked Defendant's R?

19 MS. JOHNSON: I believe I do and, in fact, I
20 believe Detective Moran may have the original with him
21 as we speak.

22 THE COURT: All right, so, if you have a
23 copy --

24 MS. JOHNSON: I think I do.

25 THE COURT: -- show it to Mr. Schechter and

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1 we'll mark that a People's exhibit.

2 MS. JOHNSON: Your Honor, with the Court's
3 permission, if Detective Moran could produce an
4 original of his handwritten notes from his case jacket?

5 THE COURT: All right, detective -- his notes
6 or what you believe to be Defendant's R?

7 MS. JOHNSON: I believe that is
8 Defendant's R.

9 THE COURT: The notes?

10 MS. JOHNSON: Correct.

11 THE COURT: Detective, do you have your notes
12 of your conversation with Ms. Awan?

13 THE WITNESS: I do.

14 MS. JOHNSON: The overview notes.

15 THE COURT: We'll mark them.

16 (Shown to counsel.)

17 MR. SCHECHTER: Oh, I have that.

18 THE COURT: People's -- we'll mark that
19 People's 15 for identification.

20 MS. JOHNSON: Do you have that?

21 MR. SCHECHTER: Um-hum.

22 MS. JOHNSON: I'll take that.

23 THE COURT: This is Defendant's R,
24 Ms. Johnson?

25 MS. JOHNSON: Yes, it is. I'm going to

ws

Moran - People - direct

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1 return the original to the detective.

2 (Shown to witness.)

3 Q. Detective Moran, could you take a look at
4 Defendant's R for identification?

5 A. Yes.

6 Q. Do you recognize that?

7 A. Yes, I do.

8 Q. What is it?

9 A. These are the -- this is the outline of the notes
10 I've taken during the interview with Sana Awan.

11 Q. And when you say overview, you're referring to --

12 A. Interview, I said.

13 Q. Is that the statement that Sana Awan made to you
14 that you referred to as the two-page statement?

15 A. No, it's not.

16 MS. JOHNSON: Your Honor, I would ask this be
17 marked as People's --

18 THE COURT: 15.

19 MS. JOHNSON: -- 15 for identification.

20 MR. SCHECHTER: Objection, going to ask for a
21 sidebar.

22 THE COURT: Well, let's mark the item and see
23 where Ms. Johnson goes with it.

24 (People's Exhibit 15 marked for
25 identification.)

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1 (Shown to witness.)

2 Q. Detective Moran if you could take a look at
3 People's 15 for identification purposes?

4 A. Yes.

5 Q. Do you recognize that?

6 A. Yes, I do.

7 Q. What do you recognize it to be?

8 A. This is the two-page statement --

9 MR. SCHECHTER: Objection, sidebar,
10 application.

11 THE COURT: No, your objection is overruled.

12 MR. SCHECHTER: Sorry, overruled, Judge?

13 THE COURT: Yeah, overruled.

14 Q. Detective, do you recognize it?

15 A. Yes.

16 Q. What is it?

17 A. This is a two-page typed statement of Sana Awan.

18 Q. Is that the complete statement that you took from
19 Sana Awan?

20 A. It is.

21 Q. Can you tell us how it was that you went from one
22 page of handwritten notes to a two-page statement?

23 A. Yes, the handwritten notes are a guideline during
24 the interview and as I do the interview I ask them -- ask
25 her to elaborate on different points and when she tells me

WS

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1 what happened I type it.

2 Q. And is that what is depicted in that two-page
3 statement?

4 A. Yes.

5 Q. Were you present when -- withdrawn.

6 Did you observe Ms. Awan sign that two-page
7 statement?

8 A. I did.

9 Q. Did she make any corrections on it?

10 A. No, she did not.

11 Q. Did she indicate it was an accurate statement of
12 what she reported to you?

13 A. Yes.

14 MS. JOHNSON: Your Honor, we would offer that
15 into evidence.

16 MR. SCHECHTER: Objection.

17 THE COURT: All right, come on up, both of
18 you.

19 COURT OFFICER: Detective, step down, please,
20 over here.

21 (Witness steps down.)

22 (Sidebar conference held as follows:)

23 MR. SCHECHTER: I raised this objection
24 before, as the Court recalls --

25 THE COURT: What's your offer on this?

WS

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1 MS. JOHNSON: Yes, your Honor.

2 When Ms. Awan was asked to identify Detective
3 Moran's notes counsel implied before the jury that she
4 eliminated certain things from his handwritten notes
5 indicating that there was a recent fabrication of her
6 testimony.

7 THE COURT: She eliminated certain --

8 MS. JOHNSON: From her statement to Detective
9 Moran because in Detective Moran's handwritten notes
10 things about the knife and things about the massager
11 were not there.

12 He confronted her about that, tried to
13 impeach her with somebody else's handwritten notes,
14 fully knowing that there was a two-page statement from
15 her where she indicated all of that.

16 MR. SCHECHTER: I'm entitled to go into what
17 I get in discovery. It was his initial notes, an
18 inexperienced detective, and he omitted any mention of
19 a force.

20 As a matter of fact, I believe they
21 originally drew it up as a misdemeanor, B misdemeanor,
22 sexual abuse, that's how incomplete his notes were.

23 This is not a recent fabrication. Counsel is
24 mistaken about my -- I never claimed a recent
25 fabrication.

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1 She is trying to get in a prior consistent
2 statement which is improperly bolstering, violates the
3 CPL and improper and prejudice to my client to the
4 point I believe would require a mistrial.

5 MS. JOHNSON: He tried to impeach her by
6 omission, which is exactly what he is not permitted to
7 do, by indicating there were things missing from her
8 statement knowing full well there are things in her
9 statement --

10 MR. SCHECHTER: I respectfully disagree with
11 counsel on that.

12 THE COURT: I think it's pretty clear,
13 Mr. Schechter, that you did ask questions about
14 Detective Moran's notes, but I also think you
15 established that it was Detective Moran's notes, not
16 any statement that she made.

17 Would I be correct in that?

18 MS. JOHNSON: Yes.

19 However, I don't think it was clarified
20 that -- I think it was left open that she omitted to
21 say things to Detective Moran based on those
22 handwritten notes because she was not confronted with
23 her statement, she was confronted improperly with
24 somebody else's notes.

25 MR. SCHECHTER: I dispute counsel's

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1 represent --

2 THE COURT: I certainly think you can argue
3 that she was never confronted with any statement she
4 made of hers in which she claimed to have omitted
5 anything. That you can certainly say.

6 MS. JOHNSON: Then if your Honor --

7 THE COURT: But, I tell you what, I'm not
8 going to allow her written statement to come in here
9 based upon the record that I have in front of me that I
10 think it's, quite frankly, I think it's clearly
11 bolstering.

12 How far Mr. Schechter may have pursued it, I
13 don't think -- the difficulty I have is trying to
14 identify what it was that he may have elicited from her
15 that he claimed wasn't there that is in here.

16 MS. JOHNSON: Would your Honor please permit
17 me, if you're not going to permit me to put that in, to
18 inquire of the detective whether or not she told him
19 those factors which counsel tried to indicate that she
20 did not say to him.

21 MR. SCHECHTER: That's hearsay.

22 THE COURT: What other factors did he ask
23 Ms. Awan that are not in this statement?

24 MS. JOHNSON: About the knife, about the
25 vibrator and if she was in fear and it's exactly in

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1 that statement.

2 THE COURT: I think it's pretty clear,
3 Mr. Schechter, you did ask her about those.

4 MR. SCHECHTER: I merely asked her if she
5 told the officer, made the statement attributed to the
6 officer, and whether she omitted mentioning that
7 statement --

8 THE COURT: No, wait a minute, you gave her
9 the notes.

10 MR. SCHECHTER: His statement.

11 THE COURT: Not his statement, his notes.

12 MR. SCHECHTER: His notes.

13 THE COURT: And then you asked her isn't it
14 true that X isn't in there and X isn't in there and X
15 isn't in there?

16 In other words, that this isn't in there,
17 that isn't in there.

18 MR. SCHECHTER: I don't think I was that
19 particular.

20 MS. JOHNSON: We have the minutes.

21 THE COURT: Give me the minutes.

22 (Shown to Court.)

23 (Pause in the proceedings.)

24 MR. SCHECHTER: I think you had limited me --

25 THE COURT: Let me finish.

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1 (Pause in the proceedings.)

2 THE COURT: All right, could I see the both
3 of you?

4 (Sidebar conference continues as follows:)

5 It appears to me after a lot of colloquy
6 going back and forth you, Mr. Schechter, asked the
7 question, "And in that statement you never told him
8 that you were threatened with a knife, did you?"

9 You object, I sustained it.

10 Next question.

11 "Question: Isn't it a fact you never told
12 him about being threatened with a knife in this
13 interview on July 22nd?"

14 There's an objection and then there's an
15 extended bench conference about what I was trying to
16 say you could or could not do, given the fact it was
17 Detective Moran's notes as opposed to any statement by
18 her.

19 MR. SCHECHTER: Right.

20 THE COURT: You wanted to refresh her
21 recollection. I basically said to you I don't want you
22 to ask, "Didn't you tell Detective Moran this," based
23 upon something that's his notes.

24 You disagreed. You cited Richardson's. Then
25 you say -- this is Mr. Schechter, "Not unless I

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1 represent this is a recent fabrication, which I'm not."

2 And then the next question, "Isn't it a fact
3 that in your original statement to Detective Moran you
4 never mentioned that you were forced?"

5 That's the question. There was an objection.
6 I asked you to read back the question. I sustained the
7 objection.

8 And then I said, "Just so we're clear,
9 Mr. Schechter, that's based upon Defendant's R, am I
10 correct," because at the time I didn't know what
11 Defendant's R was or what you had in your hand.

12 You said, "Yes, your Honor.

13 "THE COURT: For ID?

14 "Mr. Schechter: Yes."

15 And then it goes on to ask about, "Isn't it a
16 fact you were really scared of Mr. Gopaul -- you
17 weren't scared of Mr. Gopaul, you were scared of the
18 welfare of your family?"

19 MR. SCHECHTER: That has nothing to do with
20 this.

21 THE COURT: And he's not referring to
22 Defendant's R.

23 So the objection is sustained.

24 MR. SCHECHTER: Thank you, your Honor.

25 (Sidebar conference concludes.)

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1 THE COURT: All right, detective, you could
2 resume the stand.

3 (Witness resumes the stand.)

4 MR. SCHECHTER: Instruction to the jury?

5 THE COURT: Pardon?

6 MR. SCHECHTER: Could the Court instruct the
7 jury?

8 THE COURT: Members of the jury, I apologize
9 for the delay. As you could tell, we were looking at
10 some transcripts here, but the objection raised by the
11 defendant is sustained.

12 MS. JOHNSON: I have nothing else for
13 Detective Moran.

14 THE COURT: Mr. Schechter?

15 CROSS-EXAMINATION

16 BY MR. SCHECHTER:

17 Q. Detective Moran, do you have your original
18 complaint report for July 22?

19 Do you have documents, July 22 interview with the
20 complainant?

21 A. I have the case report.

22 Q. May I see it, please?

23 A. Yeah.

24 (Shown to counsel.)

25 MS. JOHNSON: Could we please have it marked,

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1 your Honor?

2 THE COURT: Only if Mr. Schechter wants it
3 marked.

4 MR. SCHECHTER: Give me a second, please.
5 (Pause in the proceedings.)

6 MR. SCHECHTER: I have this. I'm returning
7 this to the detective.

8 (Shown to witness.)

9 Q. Now, detective, how long is it that you've been a
10 detective?

11 A. Since 1995, so about 13 years.

12 Q. And you've been a police officer for a
13 considerable period of time before that, isn't that correct?

14 A. Yes.

15 Q. And as a detective you understand, of course, your
16 first interview with a complainant is very important, do you
17 not?

18 A. Yes.

19 Q. As such, in your interview it is imperative for
20 you to note down the very important parts of the elements of
21 what she says is a crime, isn't that true?

22 MS. JOHNSON: Objection.

23 MR. SCHECHTER: I'll rephrase the question.

24 THE COURT: Yes.

25 Q. It's important to get the material parts of what

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1 she says happened to her down on paper, isn't that true?

2 A. Yes.

3 Q. And especially true when you do write notes is to
4 obtain information concerning force, is that true?

5 MS. JOHNSON: Objection.

6 THE COURT: I'll sustain it as to form.

7 MR. SCHECHTER: Okay.

8 Q. Would you say that whether or not a complainant
9 has been subjected to force is something which is a material
10 part of a statement that you believe is important to obtain
11 from the complainant, correct?

12 A. Are you referring to any case or this case?

13 Q. Any case involving forceful sexual abuse?

14 A. Yes.

15 Q. But you didn't do that on July 22, did you?

16 A. I didn't do what?

17 Q. You did not write down in your July 22 notes
18 anything with respect to a knife being used against
19 Ms. Awan, did you?

20 A. I believe I did.

21 Q. In your July 22 notes?

22 A. I believe so.

23 Can I check?

24 MR. SCHECHTER: Let me see -- counsel, do you
25 have that document, please, R?

WS

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1 MS. JOHNSON: No.

2 A. It's still up here.

3 Q. Please look at Exhibit R.

4 Are those your notes?

5 A. Yes.

6 Q. All right, now, would you please tell me where in
7 your notes you say that Mr. Gopaul forced her to have sex
8 with him with a knife?

9 MS. JOHNSON: Objection.

10 THE COURT: No, I'll allow that.

11 A. That wasn't the allegation. The allegation was
12 the fear.

13 Q. So she never told you on July 22 that she was
14 threatened with a knife, is that your testimony?

15 A. She did.

16 Q. But you didn't put that down in your notes, did
17 you?

18 A. It's not in the notes it's --

19 Q. It's not in your notes?

20 A. Correct.

21 MR. SCHECHTER: May I have a moment, Judge?

22 THE COURT: Yes.

23 (Pause in the proceedings.)

24 Q. Matter of fact you treated this as a sex abuse --
25 as a misdemeanor, didn't you?

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1 MS. JOHNSON: Objection.

2 THE COURT: Yeah, sustained.

3 Q. Matter of fact, she told you he always had a knife
4 in the truck, didn't she?

5 MS. JOHNSON: Objection.

6 THE COURT: Yeah, sustained.

7 MR. SCHECHTER: Your Honor --

8 THE COURT: Yes.

9 MR. SCHECHTER: May I approach as to the --

10 THE COURT: Yes, come on up.

11 (Witness steps down.)

12 (Sidebar conference held as follows:)

13 MR. SCHECHTER: May I ask why you're
14 sustaining an objection to what's in his statement?

15 He says in his transcribed statement that he
16 always had a knife in his truck.

17 THE COURT: You're asking him about something
18 somebody said out of court. It's a hearsay statement.

19 MR. SCHECHTER: No, it's an admission as to
20 the complainant. It's not a hearsay statement, Judge.
21 It's an inconsistent statement of the complainant where
22 she testified that she didn't see -- she didn't see it
23 before May. Here she tells him he always had the knife
24 in the truck.

25 THE COURT: All right, you're referring to

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1 her notes or the written statement?

2 MR. SCHECHTER: His notes.

3 THE COURT: Can I see it?

4 MR. SCHECHTER: Sure.

5 (Shown to Court.)

6 THE COURT: I think you asked her the one
7 thing that you did establish was that she testified she
8 didn't say -- you did establish that.

9 MR. SCHECHTER: I want to make sure that I
10 established it just -- I'm not sure if I did or not,
11 there's so many objections.

12 THE COURT: To me it's still a hearsay
13 statement of the witness, so the fact that she's the
14 complainant really is of no moment in my view and I
15 think she testified when you crossed her on this that
16 she said that in the statement.

17 MR. SCHECHTER: I believe it's an
18 inconsistent statement. As such, it's admissible, your
19 Honor, because it's an admission, otherwise no
20 inconsistent statement would be admissible.

21 THE COURT: I think you established the
22 inconsistency through the person who made the
23 inconsistent statement.

24 MR. SCHECHTER: As long as you allow me to
25 mention that to the jury I have no problem with that.

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1 MS. JOHNSON: Well, actually, when he
2 confronted her with it she clarified that she was
3 talking about May and June. So when he questions her
4 about whether or not he always had a knife she said the
5 first time she saw it was in May, not outside of the
6 times charged in the indictment.

7 So she never said that he always has it as in
8 always and forever, she testified as to May in June.

9 Either way, it's improper impeachment, you
10 can't impeach detective with her testimony.

11 MR. SCHECHTER: Who says I'm impeaching him?

12 THE COURT: I don't think she said that that
13 was not there or that she -- she may have tried to
14 qualify, but clearly she said yeah. That's in his
15 notes.

16 MR. SCHECHTER: As long as that's conceded
17 and I can use that on summation that's fine.

18 THE COURT: I would think you would be
19 entitled to.

20 MR. SCHECHTER: I'm just concerned if there
21 is a readback and there's a qualification it won't be
22 there. She clearly says in the statement he always had
23 a knife in the truck, Judge.

24 MS. JOHNSON: That is mischaracterizing this
25 testimony.

ws

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1 This detective is only talking to her about
2 May and June of 2008 in Nassau County and exactly what
3 she said is that she didn't see the knife in the van
4 before May of 2008.

5 THE COURT: Just so there's no doubt about it
6 I'm going to allow Mr. Schechter to ask the question,
7 you can explore it on redirect examination, as to what
8 time period is referred to.

9 MS. JOHNSON: Okay.

10 (Sidebar conference concludes.)

11 THE COURT: All right, detective.

12 (Witness resumes the stand.)

13 Q. Detective, in your notes of July 22, 2008, there's
14 nothing at all mentioned about fear, is there?

15 Please look at your notes?

16 A. Correct.

17 Q. And she told you he always had a knife in the
18 truck, correct?

19 A. Yes.

20 Q. That's what you wrote down?

21 A. Correct.

22 Q. She didn't tell you -- withdrawn.

23 Now, there came a time when you investigated where
24 you believed the actual location of the alleged sexual
25 assault took place, is that correct?

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1 A. Yes.

2 Q. And you later ascertained that to be -- withdrawn.

3 And you later ascertained that Mr. Gopaul, in
4 fact, worked at 600 Community Drive not 400 Community Drive,
5 is that true?

6 A. Repeat the question?

7 Q. Yes.

8 Did you later ascertain that the address was 600
9 Community Drive, not 400 Community Drive?

10 A. The place of occurrence?

11 Q. The alleged place of occurrence?

12 A. Yes, 600 Community Drive.

13 Q. And you did that by the complainant pointing that
14 out to you?

15 A. Yes.

16 Q. Okay, and you took pictures of that area, no?

17 A. Yes.

18 Q. Did she indicate where within Community Drive, 600
19 Community Drive, the alleged assault took place?

20 A. She did.

21 Q. And did she say it was in the vicinity of the
22 security office?

23 A. She said that it was in the back parking lot
24 behind the building.

25 Q. When you went there was it on a weekday?

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1 A. A weekday, yes.

2 Q. A lot of cars there, no?

3 A. Reasonable.

4 Q. Sorry?

5 A. Just a reasonable amount of cars.

6 Q. What day were you there?

7 A. I don't recall the exact date. It was prior to
8 the July 22nd interview.

9 Q. You remember what day of the week it was?

10 A. No, I'm sorry.

11 Q. But it was during the week, correct?

12 A. Yes. I don't work weekends.

13 Q. Okay. Do you have a calendar with you, detective?

14 A. Not for 2008.

15 MR. SCHECHTER: I would like these marked, if
16 the Court pleases, as Defendant's Z --

17 THE COURT: Let's go from Z to double A.

18 MR. SCHECHTER: Z, AA, BB.

19 (Defendant's Exhibits Z, AA and BB marked for
20 identification.)

21 THE COURT: Okay, Mr. Schechter.

22 (Shown to witness.)

23 Q. Detective, would you please look at those
24 photographs?

25 Do those photographs represent the parking lot at

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1 600 Community Drive?

2 A. I don't see a building number on it, but there are
3 two or three buildings up there that have the same shape and
4 similar design.

5 Q. But May 6, 2009, would you agree that is a
6 weekday?

7 Do you need a calendar to refresh your
8 recollection?

9 A. I have a 2009 calendar.

10 Q. Okay.

11 A. Yes.

12 Q. Okay, and you would agree it's very hard to get a
13 picture of 600 Old -- and at the same time get the picture
14 of the parking lot, you would agree?

15 A. Say that again?

16 Q. It's difficult to get a picture of 600 --
17 withdrawn.

18 There is a 600 in the front, a big 600 number, no?

19 A. Correct.

20 Q. And you have a picture of that with you, correct?

21 A. Yes, yes.

22 Q. Would you please take that out?

23 (Witness complies.)

24 Q. Okay, now would you please examine your picture
25 and tell me if you can ascertain if that picture -- that is

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1 600 Community Drive, correct?

2 A. Yes.

3 Q. And aside from that one number there's no other
4 indicia or marking of 600 Community Drive in the parking
5 lot, correct?

6 A. Correct.

7 Q. Okay. Now, you look at those photographs.
8 Those photographs show a very full parking lot,
9 correct?

10 A. Yes.

11 Q. And that's on a week day of 2009, correct?

12 A. Yes.

13 Q. Do you have any reason to believe that would be
14 different in June 2008?

15 MS. JOHNSON: Objection.

16 THE COURT: I'll allow it.

17 You can answer that.

18 A. Depending on the hour of the day --

19 Q. Right.

20 A. -- I think it would be different.

21 Q. You ascertained that Mr. Gopaul has one of his
22 customers at 600 Old Country Road -- I'm sorry,
23 600 Community Drive, correct?

24 A. Yes.

25 Q. And that has been over a long period of time, is

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1 that right?

2 A. I believe so.

3 Q. So presumably Mr. Gopaul would know 600 Community
4 Drive is where he has a client, would that be right?

5 MS. JOHNSON: Objection.

6 THE COURT: Yeah, sustained.

7 MR. SCHECHTER: No more questions of the
8 officer, Judge.

9 THE COURT: Any redirect?

10 MS. JOHNSON: Briefly, Judge.

11 REDIRECT EXAMINATION

12 BY MS. JOHNSON:

13 Q. Detective Moran, do you recall being asked
14 questions on cross-examination by the defense attorney about
15 whether or not Sana Awan told that you she was in fear?

16 A. Yes.

17 Q. And do you recall answering Mr. Schechter's
18 question that she did indicate to you that she was in fear?

19 A. Yes.

20 Q. Did you memorialize that anywhere?

21 A. Yes.

22 Q. Where did you memorialize that?

23 A. In the two-page typed statement.

24 Q. Whose two-page typed statement?

25 A. Anna -- I'm sorry, Sana Awan.

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1 Q. Do you recall being asked by Mr. Schechter on
2 cross-examination whether or not Ms. Awan indicated that
3 there were always knives in the defendant's vehicle?

4 A. Yes.

5 Q. And do you recall indicating that she did indicate
6 that there was --

7 MR. SCHECHTER: Judge, she is leading the
8 witness.

9 THE COURT: Mr. Schechter, please.

10 MR. SCHECHTER: Objection, objection.

11 THE COURT: Can I have the question read
12 back?

13 (Record read.)

14 THE COURT: All right, can I have the rest of
15 the question, for the umpteenth time, before there's an
16 objection?

17 Q. Detective Moran, do you recall being asked by
18 Mr. Schechter whether or not Ms. Awan told you that there
19 were always knives in the defendant's van?

20 Do you recall being asked that question?

21 A. Yes.

22 Q. And do you recall what your answer was?

23 A. Yes.

24 Q. What was your answer?

25 A. That -- I don't recall the exact words, but I

ws

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1 think the answer was yes.

2 Q. And what period of time was the focus of your
3 interview involving Ms. Awan?

4 A. May and June of 2008.

5 Q. Was that the only period of time that you spoke to
6 Ms. Awan about?

7 A. Yes.

8 Q. And was the substance of her statement to you
9 involving solely May and June of 2008?

10 MR. SCHECHTER: Objection, that calls for --

11 THE COURT: All right, Mr. Schechter, again,
12 you have an objection?

13 MR. SCHECHTER: Objection.

14 THE COURT: All right, overruled.

15 MR. SCHECHTER: May I have a sidebar with
16 respect to the specifics of my objection, Judge?

17 THE COURT: Come on up.

18 (Witness steps down.)

19 (Sidebar conference held as follows:)

20 MR. SCHECHTER: When I make objections I'm
21 used to giving a reason for my objections, but --
22 that's why I'm here.

23 THE COURT: I don't understand at this point
24 because I'm sure you've gathered that I don't take well
25 to speaking objections or speeches during objections.

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1 MR. SCHECHTER: It's not experience because I
2 was just trying to put a ground.

3 The counsel's question is -- can only require
4 the officer to be clairvoyant as to the operation of
5 Sana Awan's mind.

6 He wrote down there were always knives in the
7 car. He did not ask her in May and June. She did not
8 say in May and June there were knives in the car. She
9 said there were always knives in the car. That's what
10 she said to him.

11 THE COURT: She can certainly ask him what
12 the focus of his investigation was.

13 MR. SCHECHTER: Absolutely.

14 However, she cannot ask him if she was
15 thinking that May --

16 THE COURT: I agree with you.

17 MR. SCHECHTER: That's what the nature of her
18 question was.

19 THE COURT: What I would ask you to do,
20 Ms. Johnson, is rephrase your question.

21 MS. JOHNSON: Sure.

22 THE COURT: Just so you understand, if you're
23 going to ask him about what she was thinking --

24 MS. JOHNSON: I understand.

25 (Sidebar conference concludes.)

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1 THE COURT: All right, you can rephrase the
2 question.

3 MS. JOHNSON: Yes.

4 Q. Detective Moran, when you were speaking to
5 Ms. Awan were you only speaking of May and June of 2008?

6 A. Yes.

7 Q. And was that the subject of your interview with
8 her, those two months alone?

9 A. Yes.

10 MS. JOHNSON: Nothing else.

11 THE COURT: Recross?

12 MR. SCHECHTER: Nothing further.

13 THE COURT: All right, detective, thank you
14 very much.

15 (Witness excused.)

16 MS. JOHNSON: Can I excuse him?

17 THE COURT: Yes, detective, you're excused.
18 I did it for you.

19 People?

20 MS. JOHNSON: Your Honor, at this time the
21 People rest.

22 THE COURT: All right, members of the jury,
23 this is a point in time when myself and the attorneys
24 have some legal discussion.

25 I'm not going to let you go just yet. I am

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1 going to excuse you for a little bit while we discuss
2 things that normally come at this point in a criminal
3 trial.

4 So you're going to have a little bit of a
5 recess and I'll have you back here as soon as possible.

6 (Jury exits.)

7 THE COURT: All right, Mr. Schechter, at the
8 close of the People's case?

9 MR. SCHECHTER: At the end of the People's
10 case, your Honor, the defendant moves for -- to dismiss
11 the indictment on the grounds that the People have
12 failed to prove a prima facie case.

13 THE COURT: People?

14 MS. JOHNSON: Your Honor, we would oppose
15 that application.

16 In the light most favorable to the People
17 there is sufficient evidence in the light most
18 favorable to the People that we have proven each and
19 every element of each charged offense beyond a
20 reasonable doubt.

21 THE COURT: All right, at this time the
22 application for a trial order of dismissal is denied.

23 MR. SCHECHTER: Prima facie case?

24 That was just based on the prima facie case.

25 THE COURT: Yes.

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1 MR. SCHECHTER: Do the People rest?

2 MS. JOHNSON: Yes, we rested in front of the
3 jury.

4 MR. SCHECHTER: Okay, they did. The motion,
5 that encompasses both, okay.

6 Just so the record is clear, so that the
7 Court's determination or the Court's order is that the
8 motion to dismiss based upon the People failing to
9 prove a prima facie case and the motion of the
10 defendant that the People have failed to prove their
11 case beyond a reasonable doubt are being considered
12 together and therefore the Court is denying both
13 motions?

14 THE COURT: No.

15 Are you putting on a case?

16 Because I don't think we get to the issue of
17 beyond a reasonable doubt until --

18 MR. SCHECHTER: Defendant rests.

19 THE COURT: Do you want -- I think we
20 should -- well, what I'm going to do is have you do
21 that in front of the jury, obviously.

22 All right, do you want to expand now that you
23 have rested as well?

24 MR. SCHECHTER: I have rested, Judge.

25 THE COURT: But in terms of expanding on your

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1 motion?

2 MR. SCHECHTER: Yes, I would like the record
3 to reflect, your Honor, that with respect to
4 Mr. Gopaul's testifying, that I have had a full and
5 complete opportunity to speak with him about the pros
6 and cons of his testifying. It has been discussed with
7 him fully and completely and it has been discussed with
8 him in the presence of his wife and his sister. We
9 have discussed the pros and cons of same.

10 Mr. Gopaul has decided that it is in his
11 interests, and as such we are -- he is not going to
12 testify.

13 Is that correct, Mr. Gopaul?

14 THE DEFENDANT: Yes, it is.

15 THE COURT: And as far as your motion, I just
16 assumed -- I didn't know what your position was as far
17 as whether or not you were putting on a case, your
18 motion to dismiss encompasses both prima facie and at
19 this point, now having rested, beyond a reasonable
20 doubt?

21 MR. SCHECHTER: It does, Judge.

22 THE COURT: And, People, I believe you
23 responded --

24 MS. JOHNSON: Premature --

25 THE COURT: -- perhaps unwittingly, with

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1 regard to your opposition and on both prima facie case
2 at this particular time as well as at the close of the
3 defendant -- well, the defendant now resting, the
4 motions to dismiss are denied in all respects.

5 MR. SCHECHTER: Respectfully except.

6 THE COURT: All right, let's get the jury up,
7 let them go. We're going to have a charge conference
8 and we'll have summations in the morning.

9 MR. SCHECHTER: Fine.

10 MS. JOHNSON: Your Honor, I have spoken to
11 executives in my office and there was an indication of
12 possibly the People requesting lesser included charges
13 to be submitted to the jury.

14 My executive just walked out, so I just want
15 to confirm with her, but we can deal with that after.

16 THE COURT: Okay, I'll allow you to speak to
17 whoever.

18 (Pause in the proceedings.)

19 MS. JOHNSON: I'll have to get back to
20 whoever.

21 (Jury enters.)

22 THE COURT: People having rested,
23 Mr. Schechter, does the defendant intend to put on a
24 case?

25 MR. SCHECHTER: We rest, Judge.

Moran - People - redirect

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1 THE COURT: Okay, all right, ladies and
2 gentlemen, it's moving even quicker than I said it was
3 yesterday.

4 We are at the stage where there would be
5 summations by both counsel and then my instructions on
6 the law and you'll then retire to for deliberations.

7 Obviously we're not going to do that today,
8 so therefore I'm going to let you go for today.
9 Tomorrow we'll have summations, my charge.

10 There's some further legal issues that I need
11 to take up with both counsel which I'm going to try to
12 cover after I let you go.

13 Just bear in mind, tomorrow one of the first
14 things that will happen is we're going to take a lunch
15 order from you in the morning, so plan on having lunch,
16 courtesy of the Nassau County court system, tomorrow.

17 And then we're going to have you up here, as
18 soon as we can get everybody together, for summations.

19 As I told you during jury selection, there is
20 no longer any sequestration so don't come here with a
21 duffle bag and think you're going to get a night in a
22 hotel on us, you're just going to get lunch tomorrow.

23 So as I let you go, please, at this very late
24 moment, even though the evidence, if you will, is in,
25 please, it's extremely important that you not form any

WS

Moran - People - redirect

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1 opinion at this point. Keep an open mind. You still
2 haven't heard the defendant's and the People's closing
3 arguments. You haven't heard my instructions on the
4 law. So please don't speak amongst yourselves or with
5 anybody else about the case.

6 Please don't view or visit any of the areas
7 you've heard described and my admonition about not
8 accessing things on the computer also still applies.
9 So get home safe. We will see you back here tomorrow
10 morning at the same time, okay?

11 (Jury exits.)

12 THE COURT: All right, what I would ask both
13 Mr. Schechter and yourself, Ms. Johnson, if you would
14 just come back with my law secretary, hopefully we can
15 cover the charge and get it out of the way.

16 MS. JOHNSON: Let me make a quick call,
17 confirm, and then I'll come back to chambers.

18 (Proceedings adjourned to Thursday, May 14,
19 2009 at 9:30 a.m.)
20
21
22
23
24
25

WS

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X
 4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
 : No. 2415N/08
 5 -against- :
 :
 6 HAROLD GOPAUL, : SEX ABUSE 1
 :
 7 Defendant. : Trial
 -----X

8 May 14, 2009

9 252 Old Country Road
 10 Mineola, New York

11 B E F O R E:

12 HONORABLE JAMES P. McCORMACK,
 13 Acting Supreme Court Justice

14 A P P E A R A N C E S:

15 (As previously noted.)

16 * * * * *

17 THE CLERK: Case on trial, the People of the
 18 State of New York against Harold Gopaul,
 19 Indictment 2415n of 2008.

20 Are the People ready?

21 MS. JOHNSON: We are ready.

22 THE CLERK: Defense counsel ready?

23 MR. SCHECHTER: Yes.

24 THE COURT: Before we bring the jury down for
 25 summations and charge I think the record should reflect

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1 that we had a charge conference yesterday in my
2 chambers and I just want to put our understanding of
3 what's going to be charged.

4 As I indicated to you, Mr. Schechter,
5 obviously I'm going to be giving a prompt outcry
6 charge. I showed it to you yesterday.

7 MR. SCHECHTER: Yes.

8 THE COURT: You indicated to me you wanted a
9 charge with respect to motive.

10 MR. SCHECHTER: Yes.

11 THE COURT: However, you did not want a
12 charge of interest or lack of interest.

13 MR. SCHECHTER: Is that going with the
14 charge -- that part of that charge defendant is
15 interested as a matter of law that I'm asking not be
16 included?

17 THE COURT: No, it just deals with witnesses.

18 MR. SCHECHTER: Does it also include a
19 charge, Judge, I'm asking, if the defendant is an
20 interested witness?

21 THE COURT: No.

22 MR. SCHECHTER: It does not. As long as that
23 statement is not made to the jury, yes, I want it
24 excluded.

25 THE COURT: You want it excluded?

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1 MR. SCHECHTER: Yes.

2 THE COURT: Well, it doesn't have anything
3 with respect to the defendant.

4 MR. SCHECHTER: Then you changed my mind. I
5 thought that might have been included. If that's
6 excluded I want that charge included because interest
7 is something that might be an element of this case,
8 interest.

9 THE COURT: So I'll give that.

10 Inconsistent statements you asked for. I
11 would have given it.

12 People you wanted consistency, I'll give
13 that.

14 Defendant not testifying.

15 MR. SCHECHTER: Yes.

16 THE COURT: I am going to give the falsus en
17 uno.

18 I am giving police testimony.

19 I am going to give the Molineaux charge.
20 It's identical to the one I gave after Ms. Awan
21 testified.

22 With regard to the issue of statements,
23 Mr. Schechter, you wanted a charge with regard to
24 custodial statements, which I will give, Miranda
25 rights, which I am giving, traditional involuntariness,

1 which I am giving, and the expanded charge on
2 traditional voluntariness as well as delay in
3 arraignment.

4 MS. JOHNSON: Which, your Honor, we had
5 opposed yesterday back in chambers.

6 THE COURT: Okay.

7 I think in terms of preliminary charges and
8 charges that are particular to this case, I also give
9 the indictment is not evidence charge.

10 I do give credibility factors.

11 Sentence, they're not to consider or
12 speculate as to matter of sentence.

13 Insofar as the lesser included, yesterday
14 both the People and the defendant had requested a
15 charge of sexual abuse in the third degree and that's
16 130.55 of the Penal Law as a lesser included of sex
17 abuse in the first degree, which is what the indictment
18 charges here, which is 130.65, Subdivision 1.

19 In looking at the -- both of those charges,
20 and specifically the elements of both of those charges,
21 they are, in fact, identical in terms of the elements,
22 particularly as it pertains to the issue of forcible
23 compulsion. There is actually no distinction between
24 either one.

25 So in thinking with respect to whether or not

1 there is a reasonable view of the evidence that the
2 defendant committed the lesser charge while committing
3 the greater, the Court -- in this Court's view, and I'm
4 guided by a case called the People versus Discala,
5 D-i-s-c-a-l-a, that's 45 N.Y.2d, Page 38, as well as
6 another Court of Appeals case, People versus Eboli,
7 E-b-o-l-i, that's 34 N.Y.2d 281.

8 In the Discala case, although it deals with
9 the element -- or the crimes, I should say, of
10 coercion, both of the elements, the greater and the
11 lesser included, were, as in this case, identical and I
12 think in an analogous situation the crime of sex abuse
13 in the third degree in this particular instance
14 reflects what, in this Court's view, is a -- as a
15 misdemeanor, what I would perceive, and the Court of
16 Appeals indicated in Discala, "is a safety valve
17 feature that was reserved and enacted by the
18 legislature for an unusual factual situation."

19 And specifically I think it applies in this
20 case as well. "The rationale," I'm quoting from the
21 case, "for this approach is that it would indeed be an
22 exceptional case where the method of coercion is by
23 threat of personal or property injury while at the same
24 time the heinous quality is lacking," and I think in
25 this particular instance you have a situation where the

1 elements are identical to each other and I don't think
2 there's a reasonable view of the evidence in this case
3 that would warrant a charge of sex abuse in the third
4 degree as the lesser included offense.

5 I think in this particular case the
6 prosecution has opted, if you will, to charge the sex
7 abuse in the first degree based upon the -- what they
8 believe to be the rather aggravating or heinous nature
9 of the element of force or forcible compulsion and I
10 think in this case to submit both of these charges to
11 the jury is going to force them to speculate as to
12 which charge to choose from and, clearly, if the
13 elements are identical, which they are, as in any
14 lesser included offense the jury is always asked or
15 directed not to consider the lesser unless they find
16 the defendant not guilty of the greater.

17 As the elements are identical here, I do not
18 believe that if the jury was to find the defendant not
19 guilty of the greater, that they could find him guilty
20 of the lesser when, in fact, the elements are the same.

21 In this Court's view it would seem to be --
22 well, would amount to be a repugnant verdict, should
23 that happen, and I think the sex abuse in the third
24 degree is reserved for, as in the Discala case, those
25 unusual factual situations that the legislature has

1 deemed to be not as heinous in terms of the nature of
2 the force in a sex abuse one situation and reserve that
3 particular charge for those situations that are,
4 perhaps, less serious in terms of the element of force.

5 I know, Mr. Schechter, you had indicated a
6 moment ago that, in your view, obviously, you are
7 requesting this, but as the elements are exactly the
8 same between the two, if it's your theory that there
9 is -- that this was not an act done by force, clearly
10 the jury would, if they make that finding, would have
11 to acquit your client whether it was sex abuse in the
12 first degree or sex abuse in the third degree and I
13 think under these situations, given what I've seen in
14 these two Court of Appeals cases, as the Court in the
15 Discala case said, "The jury should not be permitted to
16 choose between the crime charged and some lesser crime
17 where the evidence essential to support a verdict of
18 guilt of the lesser necessarily proves guilt of the
19 greater as well."

20 And in the Discala case the Court of Appeals
21 found that it was not error to charge the lesser
22 charge, although it was dealing with the issue of
23 coercion. It was the same type of situation where the
24 elements of the greater and the lesser were identical
25 and I think in these -- under these facts of this

1 particular case, again, I think to submit the lesser on
2 all of these 14 counts, which, I believe, are all the
3 same elements of sex abuse in the first degree, is
4 going to lead to speculation on the part of the jury
5 and I don't think that there's a reasonable view of the
6 evidence that the lesser charge, if you will, which
7 obviously has the element of force, is warranted in
8 this particular case.

9 People, you want to be heard with respect to
10 that?

11 MS. JOHNSON: Yes, Judge.

12 Your Honor, we have had the opportunity to
13 review both those cases, both Discala and Eboli, which
14 your Honor has referenced.

15 The People also have the opportunity to read
16 the McKinney's commentaries, specifically under the
17 category of lack of consent, and the commentaries say
18 to People versus Roberts, which we've provided to the
19 Court and counsel, that People versus Roberts at
20 134 A.D.2D 856, where the court unanimously reversed on
21 the law and a new trial was granted where the court
22 indicated, "the court erred in refusing defendant's
23 request to charge sex abuse in the third degree as a
24 lesser included offense of sexual abuse in the first
25 degree."

1 The court reasons, "It is impossible to
2 commit sexual abuse in the first degree by forcible
3 compulsion without concomitantly and by the same
4 conduct committing sexual abuse in the third degree
5 since sexual contact accomplished by forcible
6 compulsion is, by definition, without the victim's
7 consent.

8 "Since there is a reasonable view of the
9 evidence that the defendant touched the victim without
10 her consent, but not by forcible compulsion, the Court
11 should have granted defendant's request to charge."

12 Your Honor, in this case, where there is
13 evidence that, first, the victim states no to the
14 defendant and, in fact on his video confession he
15 states that at first she indicated no, it's our
16 position that in that light, if the jury does not
17 believe that there was that element of physical force,
18 either through the implied or expressed threats or
19 through his physical self forcing upon her, it would
20 not be an inconsistent verdict for them to find that
21 she said no, but there was no physical force and that
22 therefore the jury should be asked -- allowed to
23 consider the sexual abuse in the third degree charge
24 relying on People versus Roberts.

25 THE COURT: Mr. Schechter?

1 MR. SCHECHTER: May it please the Court, this
2 is rather unusual in the fact that both the prosecutor
3 and I both agree and the fact pattern that counsel has
4 just alluded to I raised in our conference regarding
5 the inclusion of the lesser included crime of sexual
6 abuse in the third degree.

7 I should like to say, your Honor, with all
8 due respect, I think the Court is misapplying the cases
9 that were cited for the following reasons.

10 Firstly, with respect to coercion, the
11 elements of coercion and the elements of sexual abuse
12 are totally different and while the analogy with
13 respect to the inclusion or non-inclusion of lesser
14 included crimes depends on the facts of the case, the
15 facts of this case are quite different.

16 As a matter of fact, as I referred to the
17 Court inside, cited in Discala, I'm referring to, as
18 the Court said, 45 N.Y.2d at 38, on Page 3 of the
19 opinion in the second paragraph it says, "Since the
20 statutory definition for the felony crime sets forth as
21 one of its elements that a person is guilty of coercion
22 in the first degree when he commits the crime of
23 coercion in the second degree, Penal Law 135.65, in
24 this case it was impossible to commit the first degree
25 offense without concomitantly committing, by the same

1 conduct, the second degree crime. Therefore, it
2 follows that the misdemeanor of coercion is a lesser
3 included offense of felony coercion and should be
4 charged, if requested if there is a reasonable view of
5 the evidence which would support a finding that the
6 defendant committed such lesser offense, but did not
7 commit the greater practice."

8 And, continuing, I'm sorry, on the top of
9 Page 3 it says, "In other words, it is not for the
10 trial judge to speculate -- " not the jury, "It is not
11 for the trial judge to speculate as to what would be
12 the ultimate finding of the jury. The court simply
13 determines if there is a reasonable view of the facts
14 which would support a conviction of the lesser crime
15 but not the greater."

16 And here's the crucial element, "The evidence
17 must be viewed in the light most favorable to the
18 defendant," and that's quoted in the opinion that the
19 Court cited, People v. Discala.

20 THE COURT: Let me just ask, Mr. Schechter, I
21 assume that your theory is going to be that there
22 was -- this was not a forcible act on the part of your
23 client.

24 MR. SCHECHTER: I am going to argue that and,
25 in the alternative, that if there was, it was minimum

1 overcoming of the resistance.

2 And, let me say, we all have heard within the
3 last --

4 THE COURT: Well, if the elements of force
5 are forcible compulsion, and, again, they are identical
6 in sex abuse three and sex abuse one, under this
7 subdivision --

8 MR. SCHECHTER: I respectfully disagree.

9 THE COURT: Well, if you want I can show you
10 the charge. I don't know if you bothered to take a
11 look at it, but the elements, I can tell you right now,
12 are identical and both of them obviously have and
13 element of -- the element of forcible compulsion in
14 them and the elements of forcible compulsion are
15 identical, they're both the same. I don't think that
16 there's a reasonable view of the evidence, base upon
17 your theory that there was no force, that the jury
18 could find sex abuse in the third degree and not find
19 the greater offense of sex abuse in the first degree.

20 MR. SCHECHTER: With all due respect, the
21 Court is not permitting me to continue.

22 THE COURT: Oh, I'm going to permit you to
23 continue, I'm just trying to make a point.

24 MR. SCHECHTER: Because I am completely able
25 and permitted to argue alternative theories to the

1 jury, as it is my privilege and my legal right to do so
2 and I intend to do so.

3 However, as counsel stated, looking at the
4 evidence most favorable to the defendant, when
5 Mr. Gopaul was on that videotape he was asked
6 specifically by, I think it was Mr. Hughes, although
7 Mr. Jarred Rosenblatt, who is in the courtroom during
8 these arguments and I'll refer to that later, asked the
9 defendant, "Well, did she agree to the -- to your
10 advances," and the defendant, in sum and substance, and
11 I hope if this matter does go up on appeal that the
12 Appellate Division and so on will view the videotape so
13 they could see what was said or hear what was said
14 because since it's a videotape it's not something that
15 becomes a Court exhibit except the actual artifact.

16 The defendant said on the videotape in
17 response to the question, "Did she agree -- " in sum
18 and substance, "Did she agree to your sexual advances,"
19 and the defendant says, in sum and substance, "Well,
20 not at first. She said no at first but then I said
21 okay, okay."

22 THE COURT: Implying that it was consensual.

23 MR. SCHECHTER: Well, that was the
24 defendant's bent, but the words could be interpreted
25 and in these days, 2009, where we have been

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1 indocctrinated over the last --

2 THE COURT: Mr. Schechter, don't give me an
3 anthropology.

4 MR. SCHECHTER: I'm not, I'm going by way of
5 analogy.

6 THE COURT: Just make your point, if you
7 will.

8 MR. SCHECHTER: I will . No is no. We've
9 been hearing that time and time again, no is no.

10 So if the complaining witness had said, "No,
11 I don't want to," theoretically, that's a question of
12 fact whether the jury -- well, she really meant no, did
13 not mean no, if she said, "No, please don't do it," and
14 he says, "It's okay, it's okay," a possible view of the
15 evidence, a reasonable view of the evidence, could be
16 that while the force does not rise to the level of sex
17 abuse in the first degree certainly, under those
18 circumstances, sexual abuse in the third degree could
19 be contemplated and I think that's why these instances
20 are relatively fact specific, especially since the
21 Court has cited these cases which deal with coercion
22 and not with sexual abuse in the third degree.

23 Prosecution has already cited a case directly
24 on point in sexual --

25 THE COURT: Let me just interrupt you by

1 saying that the case that the prosecutor cited, if you
2 notice, had no elucidation, if you will, of the facts
3 regarding what the Court's decision was.

4 MR. SCHECHTER: Mine is fact specific,
5 however, Judge, and we have his own words on the
6 videotape. It's in evidence and it's got to be
7 interpreted in the light most favorable to the
8 defendant and that is my proffer.

9 THE COURT: And you're correct in that the --
10 it has to be viewed, should be viewed, in the light
11 most favorable to the defendant, but I think under
12 these circumstances in taking that approach that there
13 is no reasonable view of the evidence in this instance,
14 given the evidence that the Court and this jury has
15 heard, that would support that this is one of those, to
16 use your words, no-means-no type of situations.

17 This is not a case where you have an isolated
18 incident of sexual contact between an alleged victim
19 and a defendant. This is one that's been charged as a
20 pattern, if you will, over a period of two months.

21 You're free to argue whatever theory you
22 think is -- the evidence allows, but I think under
23 these circumstances to submit these lesser counts to
24 the jury is really going to lead to unnecessary
25 speculation on their part, particularly as the elements

1 are identical.

2 So for those reasons I'm not going to charge
3 it.

4 One last thing I want to take up before we
5 begin summations.

6 MR. SCHECHTER: I respectfully except to your
7 Honor's ruling each, and every part of your Honor's
8 ruling, for the reasons stated and for the reasons that
9 are contained in those cases.

10 THE COURT: Okay.

11 With regard to the issue of forcible
12 compulsion as it's going to be charged, it gets to
13 Subdivision 2, it reads, "By a threat expressed or
14 implied which places a person in fear of immediate
15 death or physical injury to himself or herself or
16 another person."

17 It goes on to state, "Or in fear that he or
18 she or another person will immediately be kidnapped."

19 That second part, Mr. Schechter, or in fear
20 that he or she or another person will be immediately
21 kidnapped --

22 MR. SCHECHTER: I want that out, Judge.

23 THE COURT: You asked that that be excluded,
24 is that right?

25 MR. SCHECHTER: Yes, yes.

1 THE COURT: And I will do that.

2 Anything else we need to take up?

3 MS. JOHNSON: I would just ask for a couple
4 of minutes after counsel's summation.

5 THE COURT: Yes.

6 (Jury enters.)

7 THE COURT: All right, members of the jury,
8 good morning, welcome back.

9 We're about to hear from both counsel their
10 summations which will then be followed by my
11 instructions on the law.

12 Members of the jury, you will now hear
13 summations of the lawyers.

14 Following the summations I will instruct you
15 on the law and you will begin your deliberations.

16 Under our law defense counsel will sum up
17 first and the prosecutor must follow. The lawyers may
18 not speak to you after that.

19 Summations provide each lawyer an opportunity
20 to review the evidence and submit for your
21 consideration the facts, inferences and conclusions
22 that they contend may properly be drawn from the
23 evidence.

24 If you find that a lawyer has accurately
25 summarized and analyzed the evidence and if you find

1 that the inferences and conclusions the lawyer asked
2 you to draw from that evidence are reasonable, logical
3 and consistent with the evidence, then you may adopt
4 those inferences and conclusions.

5 Members of the jury, bear in mind the
6 following points:

7 First, you are the finders of the fact and it
8 is for you and you alone to determine the facts from
9 the evidence you find to be truthful and accurate.

10 Thus, whatever the lawyers say and however
11 they say it, you should remember that what the lawyers
12 say is simply argument submitted for your
13 consideration.

14 Second, remember the lawyers are not
15 witnesses in this case so if a lawyer asserts as fact
16 something that is not based on the evidence you must
17 disregard it.

18 Remember, nothing the lawyers say at any time
19 is evidence so nothing the lawyers say in their
20 summations is evidence.

21 You have heard the evidence and you must
22 decide this case on the evidence as you find it and the
23 law as I explain it.

24 Third, during the summations one lawyer's
25 recollection of the evidence may, in good faith, differ

1 from the recollection of the other lawyer's or from
2 your own recollection and the lawyers will undoubtedly
3 differ with each other on the conclusions to be drawn
4 from the evidence.

5 If your recollection, understanding and
6 evaluation of the evidence -- I should say it is your
7 recollection, understanding and evaluation of the
8 evidence that controls, regardless of what the lawyers
9 say or have said about the evidence.

10 You and you alone are the judges of the facts
11 in this case.

12 If during your deliberations you need to have
13 your recollection of the testimony refreshed you may
14 have all or any portion of the testimony read back to
15 you.

16 Fourth, remember under our law I am
17 responsible for explaining the law, not the lawyers.

18 Now, prior to summation the lawyers were
19 permitted to read instructions on the law that I will
20 deliver to you after their summations and the lawyers
21 are permitted to refer briefly to portions of those
22 instructions in their summations if they wish.

23 However, even though a lawyer may refer to
24 portions of those instructions you must listen
25 carefully to all the instructions that I will give you

1 after the summations.

2 If you think there is any difference between
3 what the lawyers may have said and what I say the law
4 is, your sworn duty as jurors is to follow my
5 instructions on the law as you have promised me you
6 would do.

7 First, if during the summations I sustain an
8 objection to a comment of a lawyer, that comment will
9 be stricken from the record and you must disregard it
10 as if it were never said.

11 If I overrule an objection the comment will
12 stand.

13 Whether I sustain or overrule an objection or
14 on my own indicate that a comment must be disregarded,
15 my ruling indicates only that the comment does or does
16 not violate one of the rules set forth for the lawyers
17 following summations.

18 It is not an attempt to indicate that I have
19 an opinion on what is said or about the facts of the
20 case or whether the defendant is guilty or not guilty.

21 Remember, under our law you and you alone
22 judge what facts, if any, are proven and whether the
23 defendant is guilty or not guilty, not I and not the
24 lawyers.

25 At this time we'll turn to the summations.